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ABSTRACT

Case citations from federal and state court decisions concerning violence and school safety are organized in five major sections with brief summaries of relevant cases in subcategories followed by a table of cases cited. The major sections are as follows (1) "Assaults on School Personnel" (Michael L. Yates); (2) "The Fourth Amendment: Search and Seizure" (Stephen B. Thomas and Mary Jane K. Rapport); (3) "Negligence" (William Evans); "(4) "The Assault and Abuse of School Children" (Lyndon G. Furst); and (5) "Due Process and Student Discipline" (William Shula). (MLF)

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ED 383 035

Case Citations
1994

SEVENTEENTH Series (VIOLENCE AND SCHOOL SAFETY)

Edited by Charles J. Russo, Ph.D., J.D.
College of Education, University of Kentucky

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Case Citations
Assaults on School Personnel

SEVENTEENTH Series, Number 1
Prepared by Michael L. Yates, J.D., Associate Professor,
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Assault & Battery

Civil

The intent necessary to commit civil battery is that of causing an unpermitted contact, not of having harmful or offensive contact. ***White v. University of Idaho***, 797 P.2d 108 (1990).

The majority rule, which was followed in a case involving the shooting of a teacher and of others, is that insanity is not a defense to civil liability for battery. ***Williams v. Kearby***, 775 P.2d 670 (Kan. Ct. App. 1989).

In determining the liability for battery by a student in an altercation with a teacher, the teacher's conduct is measured against whether he or she used reasonable force to maintain order, not whether he or she was the aggressor. Thus, the teacher's conduct is relevant to the issue of the student's liability for punitive damages. Also, under a statute that holds parents liable for intentional torts committed by their child, actual damages are not limited to permanent injury and out-of-pocket expenses but can extend to cuts, bruises, bleeding, and tangible emotional distress. ***Garrett v. Olsen***, 691 P.2d 123 (Or. Ct. App. 1984).

Criminal

It is not double jeopardy to charge an individual with both sexual assault of a minor female and assault of a school teacher when the acts are perpetrated on different dates and on different victims. ***In re G.A.O.***, 854 S.W.2d 710 (Tex. Ct. App. 1993).

A person may be convicted of aggravated assault on a school bus driver, who is an employee of a school district but not an employee of a school, as mandated by the language of the statute. Otherwise, no teacher or employee of a public school would be protected, as only employees of private institutions would fall within the definition of school. ***State v. Reed***, 832 P.2d 694 (Ariz. Ct. App. 1992).

Evidence of prior similar acts, two of which involved attacks on teachers and one on a librarian, were admissible in upholding a conviction for aggravated assault and intent to rape a teacher in a school parking lot. ***Henderson v. State***, 420 S.E.2d 813 (Ga. Ct. App. 1992).

A statement made by a fourteen-year-old defendant at the police station in his mother's presence concerning a shooting incident at a high school in which a student was killed and a teacher wounded was suppressed because the defendant's father, who knew about the facts of the investigation and the seriousness of the situation from having heard radio reports while at work, was deliberately denied access to his son and was deceived about his son's status by police. ***People v. Bentley***, 587 N.Y.S.2d 540 (N.Y. Sup. Ct. 1992).

Where assault had been elevated from a Class C to a Class B misdemeanor if the victim is a teacher on duty at an accredited school, a conviction for fondling a teacher as she was walking on campus was upheld in spite of an objection that the teacher was not in the performance of an educational duty. ***Trujillo v. State***, 809 S.W.2d 593 (Tex. Ct. App. 1991).

Under a statute which maintained that a person commits the crime of aggravated battery if while on school grounds or in any part of a building used for school purposes he or she knows the individual harmed is a teacher or other person employed in any school, there was sufficient evidence to support a criminal conviction where the father of a first grade student insulted or provoked a teacher by poking her in the chest with his finger during a dispute in the school parking lot. ***People v. Dunker***, 577 N.E.2d 499 (Ill. App. Ct. 1991).

A student who kicked his teacher was guilty of battery where the proof was beyond a reasonable doubt that he knowingly caused or attempted to cause physical harm to the teacher. ***In re Cooper***, LEXIS 3889, 1989 WL 108730 (Ohio Ct. App. 1989).

An extended-term sentence of eighty years' incarceration for a defendant convicted of murder was not excessive when the crime involved the sexual assault and stabbing death of a teacher in the school library and was accompanied by exceptionally brutal or heinous behavior indicative of wanton cruelty. ***People v. Peeples***, 539 N.E.2d 1376 (Ill. App. Ct. 1989).

An adult defendant's punishment of six years in prison at hard labor for striking a principal in the face with a wine glass at a school picnic is not excessive

if the trial judge considered both the aggravating and mitigating factors and if the sentence is within the range of factually comparable cases. ***State v. Francosi***, 511 So. 2d 1181 (La. Ct. App. 1987).

A statute that treats any attack by a parent or other external person upon a school district employee as criminal battery does not violate the equal protection clause. ***Walker v. State***, 501 So. 2d 156 (Fla. Ct. App. 1987).

The defendant in a criminal prosecution for assaulting a teacher is entitled to a new trial if evidence about prior convictions or the lack of a sufficient waiver for proceeding *pro se* prejudicially prevents a fair trial. ***State v. Lyons***, 335 S.E.2d 532 (N.C. Ct. App. 1985).

Fringe Benefits & Workers' Compensation

An employer's obligation under a state workers' compensation statute was satisfied when a teacher received two-thirds of her salary for each year she was temporarily disabled as mandated by statute. She was also paid the remaining one-third of her salary pursuant to a collective bargaining agreement providing that a teacher absent from school as a result of injury caused by accident or assault in the course of employment be paid an amount, joined with the compensation payment, equal to her full salary. ***Boulay v. City of Waterbury***, 607 A.2d 450 (Conn. App. Ct. 1992).

The exclusive remedy provisions of a workers' compensation statute do not bar coverage for injuries caused by a co-worker's conduct that a teacher would not normally expect to find in the workplace. ***Ruparcich v. Borgman***, 547 A.2d 1279 (Pa. Commw. Ct. 1988).

A teacher was entitled to workers' compensation when she was assaulted in her car immediately after exiting the school parking lot and was blocked by the traffic of departing students; the special risk rule applies in these circumstances to the going-and-coming rule. ***Parks v. Workers' Compensation Appeals Bd.***, 660 P.2d 382 (Cal. 1983).

Governmental Immunity

A complaint by a teacher who, due to his inability to summon security personnel, was injured when he attempted to remove a weapon from a student in his classroom was dismissed where he failed to prove the board owed him a special duty. ***Jacobellis v. City of New York***, 602 N.Y.S.2d 877 (N.Y. App. Div. 1993).

Absent a showing of a special duty, a board of education is not liable for injuries sustained by a teacher who intervenes to prevent an assault by one student on another. ***Brady v. Board of Educ. of the City of New York***, 602 N.Y.S.2d 892 (N.Y. App. Div. 1993).

Where a complaint failed to present a claim for breach of a special duty by defendants in a governmental capacity, an action by a high school assistant principal for damages sustained when she was sexually assaulted in an unlocked book room by an unknown assailant was dismissed. ***Porterfield v. City of New York***, 573 N.Y.S.2d 681 (N.Y. App. Div. 1991).

A school board was immune from liability when an intruder assaulted a teacher prior to the beginning of the school year on a day when teachers were free to come and set up their classrooms but attendance was not required, since the allegedly negligent act of defendant arose out of the exercise of a discretionary function. ***Doe v. Board of Educ. of the Memphis City Sch.***, 799 S.W.2d 246 (Tenn. Ct. App. 1990).

Where a teacher brought suit to recover for injuries sustained when she was sexually assaulted in a faculty ladies room, the alleged failure to maintain an adequate system of key distribution was a governmental rather than a proprietary function, entitling the school district to immunity from liability. ***Marilyn S. v. City of New York***, 539 N.Y.S.2d 293 (N.Y. App. Div. 1989).

The provision of security against physical attacks by third persons based on the alleged failure to adequately maintain a school yard gate is a governmental rather than a proprietary function, triggering governmental immunity in the absence of a special duty to protect a plaintiff. ***Bonner v. City of New York***, 539 N.Y.S.2d 728 (N.Y. 1989).

A statute providing immunity for discretionary-decisional acts properly bars a negligence action based on an administrators' selection, training, and supervision of security personnel while allowing a negligence claim against security guards based on their execution of specified procedures. ***Giddings v. City of Detroit***, 444 N.W.2d 242 (Mich. Ct. App. 1989).

Liability may not be imposed upon a governmental entity for negligence unless the plaintiff proves by a preponderance of the evidence that the entity, here a school district, owes him a special duty. Mere status as an employee is not sufficient to meet this requirement. Thus, placing hostile students in a class is an educational function with no connection to a school district's function as a landlord. ***Bisignano v. City of New York***, 524 N.Y.S.2d 49 (N.Y. App. Div. 1988).

Hiring security guards is a governmental rather than a proprietary function, entitling a district to immunity from liability for alleged negligence, unless a special duty of protection is shown. ***Weinstein v. Board of Educ. of the City of New York***, 511 N.Y.S.2d 882 (N.Y. App. Div. 1987).

School districts are protected by sovereign immunity, but their employees are not protected by official immunity where their acts are intentional torts or *ultra vires*. ***Bego v. Gordon***, 407 N.W.2d 801 (S.D. 1987).

Students with Disabilities

A school district's proposed placement of a student with an emotional disability who verbally and physically threatened teachers and students who sought to keep him quiet and isolated rather than to teach him control to his own behavior and to interact with non-disabled students violated both the educational benefit and least restrictive environment requirements of the then EHA. ***Chris D. v. Montgomery County Bd. of Educ.***, 753 F. Supp. 922 (M.D. Ala. 1990).

A student with an emotional disability whose violent and aggressive behavior in regular classes presents a severe and on-going threat of imminent danger to himself and others may be enjoined from attending regular classes and limited to participation in a behavioral management class or home care. ***Texas City Indep. Sch. Dist. v. Jorstad***, 752 F. Supp. 231 (S.D. Tex. 1990).

By adjudicating a student who attacks others as a delinquent rather than by punishing him because of his disability, the state assumed the role of a concerned and benevolent counselor attempting to assist him in becoming a responsible member of society such that any alleged violations of the Education of the Handicapped Act required separate resort to that statute's procedures. ***In re Cooper***, LEXIS 3889, 1989 WL 108730 (Ohio Ct. App. 1989).

In the absence of evidence that a student could not reasonably be expected to control his assaultive behavior or appreciate its consequences, his learning disability did not preclude liability for punitive damages. ***Anello v. Savignac***, 342 N.W.2d 440 (Wis. Ct. App. 1983).

Juvenile Delinquency

A motion to quash a subpoena duces tecum demanding the names, addresses, and telephone numbers of students and other witnesses present when a juvenile entered a high school classroom without permission and assaulted a teacher was partially granted on the condition that the assistant principal, to whom the subpoena was directed, produce the persons whose names were requested at a time and place to be mutually chosen. ***In re Terry D.***, 582 N.Y.S.2d 681 (N.Y. App. Div. 1992).

The lower standard of preponderance of the evidence is sufficient to prove that a juvenile violated the terms of his probation by allegedly committing aggravated battery against a teacher by striking her in the chest and knocking her to the ground, even though there was conflicting testimony which would be insufficient to prove the offense itself beyond a reasonable doubt. ***In re N.L.R.***, 558 N.E.2d 538 (Ill. App. Ct. 1990).

A student who kicked a teacher while other educators tried reasonably to control him was found to be an "unruly child" under the juvenile code based on his pattern of disruptive and destructive conduct. ***In re Cooper***, LEXIS 3889, 1989 WL 108730 (Ohio Ct. App. 1989).

Under a statute that makes it a misdemeanor for a disruptive minor to remain disruptively on school grounds without lawful business after being asked to leave by an administrator , affirmative acts of distur-

bance are not required; it is sufficient if the minor's continuing presence on the grounds interferes with the peaceful conduct of school activities. ***In re Jimi A.***, 257 Cal. Rptr. 147 (Cal. Ct. App. 1989).

Evidence that four days before assaulting a teacher on school property, a juvenile was examined and found to appreciate the wrongfulness of his conduct in connection with a misdemeanor battery against another teacher, is relevant as proof that the minor had the requisite mental capacity to understand how inappropriate his conduct was in a case of felony assault. ***In re Nirran***, 255 Cal. Rptr. 327 (1989).

Negligence

Parents

A negligence claim may not be sustained against parents for their son's assault on a teacher where it was not shown by a preponderance of the evidence that the parents breached their duty and, even if they had, that their breach would have prevented the injury. ***Anello v. Savignac***, 342 N.W.2d 440 (Wis. Ct. App. 1983).

School District

Since pupil placement is a matter of educational policy, the responsibility of which lies within the professional judgement and discretion of the administration, a school board cannot be found negligent for allowing a student who allegedly assaulted a teacher to remain in the school. ***Brady v. Board of Educ. of the City of New York***, 602 N.Y.S.2d 892 (N.Y. App. Div. 1993).

Where a parent who came to pick up books for her son was struck by a student with a history of unprovoked violent attacks, a school's duty to protect teachers and other school personnel from reasonably foreseeable intentional or criminal acts of students extended to invitees on school premises. ***Garufi v. School Bd. of Hillsborough County***, 613 So. 2d 1341 (Fla. Dist. Ct. App. 1993).

In a negligence action to recover damages for personal injuries, a school psychologist, who was raped and sodomized in a school annex building where she maintained an office, demonstrated the prima facie existence and breach of a special duty by the school board. ***Carole A. v. City of New York***, 565 N.Y.S.2d 169 (N.Y. App. Div. 1991).

In a section 1983 action brought by a teacher stemming from an allegation that her principal violated her constitutional rights by dragging her from a classroom, the district court held that the mere failure to supervise or properly train under section 1983 cannot be based upon simple negligence. ***Coleman v. Wirtz***, 745 F. Supp. 434 (N.D. Ohio 1990).

The allegedly negligent actions of a school principal concerning whether a door to the school should be left unlocked is a discretionary function for which the school board is not liable. ***Doe v. Board of Educ. of the Memphis City Schs.***, 799 S.W.2d 246 (Tenn. Ct. App. 1990).

In a negligence action by a teacher who requested that a student who had threatened her be removed from her class, the school district was not liable where it initiated the transfer process even though it had not notified the teacher. ***Meister v. City of New York***, 519 N.Y.S.2d 665 (N.Y. App. Div. 1987).

The hiring of security guards, who allegedly did not maintain their proper posts at the time of the attack on a teacher, did not create a special duty to protect the teacher against criminal acts of third parties upon school premises. ***Weinstein v. Board of Educ. of the City of New York***, 511 N.Y.S.2d 882 (N.Y. App. Div. 1987).

A school district is not liable for failing to repair a hole in the fence through which an assailant entered the school grounds and committed armed robbery of a teacher where the injured party did not prove reasonable foreseeability. ***Kavanaugh v. Orleans Parish Sch. Bd.***, 487 So. 2d 533 (La. Ct. App. 1986).

Self-Defense

The questions of who started a student-teacher fight and whether there was an interval between justified and unjustified force are irrelevant to a determination as to self-defense. The key consideration is whether the defendant continued to use force beyond the point where, acting as a reasonable person, he would realize that further force was no longer necessary. Also, evidence of the victim's reputation for violence is admissible to support a theory of self-

defense only where it shows the victim's state of mind or propensity for violence. ***In re D.N.***, 533 N.E.2d 84 (Ill. App. Ct. 1988).

Self-defense requires a finding of being in danger of receiving bodily harm such that mere words, no matter how calculated they are to excite or irritate, cannot constitute provocation justifying a battery. ***Dean v. Nunez***, 423 So. 2d 1299 (La. Ct. App. 1982).

Teacher Termination

Termination of a teacher's employment for striking students was reversed when the circumstances encountered by the teacher amounted to a breach of classroom order or at least a threat thereto, justifying the use of reasonable and prudent force to reestablish or maintain order. ***Fredrickson v. Denver Pub. Sch. Dist. No. 1***, 819 P.2d 1068 (Colo. Ct. App. 1991).

The termination of a teacher's contract was reversed where the teacher displayed a gun to, but did not point a gun at, an attacking, board-wielding student in an isolated incident of reasonable self-defense. ***Landry v. Ascension Parish Sch. Bd.***, 415 So. 2d 473 (La. Ct. App. 1982).

Due Process

A *Goss*-type hearing in which the teacher was informed of the charges against him and given a chance to tell his side of the story does not provide a meaningful opportunity to be heard. Thus, denying a teacher a full-blown hearing before the school board to challenge a four-day suspension without pay and a transfer to another school following an incident in which he kicked and slapped a student after the student struck him in the chest violated procedural due process. ***Winegar v. Des Moines Indep. Community Sch. Dist.***, 20 F.3d 895 (8th Cir. 1994).

A high school student who was expelled for assaulting an athletic coach failed to demonstrate he was denied due process even though the coach was not present at the hearing. ***Johnson v. Humble Indep. Sch. Dist.***, 799 F. Supp. 43 (S.D. Tex. 1992).

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Case Citations
The Fourth Amendment: Search and Seizure

SEVENTEENTH Series, Number 2
Prepared by Stephen B. Thomas, Kent State University and
Mary Jane K. Rapport, University of Florida

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The following cases examine issues related to the application of the Fourth Amendment in schools and are intended to provide direction and clarification for Fourth Amendment issues directed primarily at students from kindergarten through grade twelve. The cases are categorized by the primary judicial issue and organized chronologically within each category. Application of the Fourth Amendment in schools provides for a lower standard than that which dictates the need for establishing probable cause outside of educational settings. Reasonable cause for searches in schools will be upheld when the scope of the search is reasonable and is justified at its inception.

Sniff Dog Cases

Since the use of a dog to sniff lockers and cars was not found to have constituted a search, it is unnecessary to make an inquiry into the reasonableness of sniffing lockers and automobiles. However, in regard to sniffing students, "the degree of personal intrusiveness involved in this type of activity . . . is a search within the purview of the Fourth Amendment," requiring individualized suspicion, and because such suspicion did not exist prior to the alert of the dog, the search was ruled unconstitutional. Also, it was necessary to prove the dogs reliable (i.e., their ability to determine if illegal contraband is currently present) if the alert to a locker or car is used to justify a search of a student's person. ***Horton v. Goose Creek Indep. Sch. Dist.***, 690 F.2d 470 (5th Cir. 1982).

Even though school and law enforcement officials had neither specific suspicion nor a warrant, dogs were used to search lockers where students had signed a consent to search form prior to receiving lockers at the beginning of the year and were given notice that the lockers were subject to being opened. The use of a sniff dog was upheld after it led to the discovery of marijuana in a locker assigned to one student who could not support his denial of using the locker and was later transferred to an educational service center from which he graduated one year later. ***Zamora v. Pomeroy***, 639 F.2d 662 (10th Cir. 1981).

A search of fifty students, eleven of whom were strip searched, led to the discovery that seventeen possessed contraband. Diane Doe was among those who were strip searched, even though she possessed no illegal contraband and was identified apparently because she played with her own dog (which was in heat) prior to coming to school. While the use of the dog was ruled not to have constituted a search under the Fourth Amendment, the strip search was impermissible as the court noted that the nude search of a thirteen-year-old child is an invasion of constitutional rights of some magnitude in violation of any known principle of human decency. The court further ruled that since the conduct of school officials exceeded the bounds of reason by "two and a half country miles" it was not protected by good faith immunity. ***Doe v. Renfrow***, 631 F.2d 91 (7th Cir. 1980).

A drug-sniffing dog was used in a class-by-class search as students remained at their desks. However, students who were identified were removed from class and asked to empty their pockets. After two brothers were screened and proved not to be in possession, a search of their cars uncovered marijuana butts. Consequently, their sister, whom the dog had not identified, was searched and found in possession of drug paraphernalia. When each student was suspended three days and had three points deducted from their final grades for each day missed, one of the boys failed to graduate with his class. The search was found to be unreasonable because it was of a sweeping and indiscriminate scope lacking individualized suspicion and threatening to the students because of the use of large dogs. ***Jones v. Latexo Indep. Sch. Dist.***, 499 F. Supp. 223 (E.D. Tex. 1980).

Locker Searches

Where a random search of student lockers resulted in the confiscation of a gun and cocaine from the plaintiff's coat pocket, he claimed a violation of his Fourth Amendment right to a "reasonable expectation to privacy" in his locker. However, since the lockers were school property as defined in the school handbook and since student locks were not permitted, his expectation to privacy was not reasonable. Thus, the search was upheld in light of the significant risk of imminent, serious personal harm to students and staff. ***In re Isiah B.***, 500 N.W.2d 637 (Wis. 1993).

A search of two students' book bags and lockers was held to be reasonable based on the following factors: a statement of a third student who implicated the defendants; a conversation heard by their teacher earlier in the day implicating them in the possession of

drugs in school; marijuana found in one of their lockers; and marijuana found in the cigarette package a third student who implicated the two defendants threw in a garbage can. ***People v. Taylor***, 625 N.E.2d 785 (Ill. App. Ct. 1993).

A high school student convicted of possession of marijuana with attempt to distribute following the discovery of evidence in his locker unsuccessfully sought to have the evidence suppressed based on a warrantless search where the information was provided to authorities by a reliable source. ***Commonwealth v. Snyder***, 597 N.E.2d 1363 (Mass. 1992).

The warrantless search of a student's locker by an AP was reasonable where there was a report that the student offered to sell two handguns he claimed to have in his possession. ***S.C. v. State***, 583 So. 2d 188 (Miss. 1991).

Where two reliable students informed a teacher that a third child was carrying a gun, he reported the information to the AP who searched the student's locker. The court upheld the search and compared the locker, which is school property and is made available to students for the limited purpose of storing items legitimately on school premises, to an airport or train station locker, where the lessor would have a greater expectation of privacy. ***Commonwealth v. Carey***, 554 N.E.2d 1199 (Mass. 1990).

Where a student informed the swimming coach that another student attempted to sell him marijuana, the coach conveyed the information to two APs who, in the presence of the defendant, searched his locker and found two marijuana cigarettes. The search was upheld since the court ruled that the reasonable suspicion standard had been met. ***State v. Michael G.***, 748 P.2d 17 (N.M. Ct. App. 1987).

A juvenile who had been convicted of violating the State Uniform Controlled Substances Act appealed on the ground that the search of his locker and a metal box in it violated his Fourth Amendment rights. The search was found to be "reasonable" under ***T.L.O.*** since a reliable student witness had seen the defendant selling marijuana stored in the box in his locker. ***State v. Brooks***, 718 P.2d 837 (Wash. Ct. App. 1986).

A student who was adjudicated delinquent for having committed grand theft ($3,000 worth of school lunch tickets) appealed, claiming that the evidence derived from a school search should be suppressed. The search was upheld where the AP who conducted it had reasonable grounds for suspecting that a search of the student's locker would produce evidence that the student had been violating the law, and its scope was reasonably related to the circumstances. ***R.D.L. v. State***, 499 So. 2d 31 (Fla. Dist. Ct. App. 1986).

While the observation of a student's taking a single pack of cigarettes out of his locker provided reasonable suspicion to search for and confiscate them, this did not justify a more extensive search of his locker. ***In re Dumas***, 515 A.2d 984 (Pa. Super. Ct. 1986).

A student unsuccessfully claimed a violation of his Fourth Amendment rights when a warrantless search of his locker by an AP was found to be reasonable since the AP noticed the smell of alcohol on a friend of the student who claimed that he had consumed a beer at the home of the plaintiff prior to coming to school. Since the AP believed that the student may have brought alcohol to school, he was justified in directing the student to open his locker, which then led to the discovery of marijuana. ***State v. Joseph T.***, 336 S.E.2d 728 (W. Va. 1985).

A principal opened the locker of a student and permitted the police to search within, leading to the seizure of marijuana. Even though an invalid warrant had been used in the search, the search was upheld on the ground that the locker was not the student's property. ***Overton v. Rieger***, 311 F. Supp. 1035 (S.D. N.Y. 1970).

Automobile Searches

Upon recovering $230 in small bills and a piece of paper with a telephone pager number on it from a student who was implicated by an informer, a student's car was searched, revealing a pager, a notebook with names and dollar amounts, and marijuana inside a briefcase in the trunk. The search was held to be reasonable based on the past reliability of the informer, the money and pager number found on the student, the problems the school had been having with drug use, and the need to act before the car was driven off school grounds. The court concluded that reasonable suspicion standards do not apply exclusively to lockers and personal searches. ***State v. Slattery***, 787 P.2d 932 (Wash. Ct. App. 1990).

The search of a student's car parked on school grounds was upheld by reasonable suspicion and by the school's interest in maintaining discipline throughout the school, both in classrooms and on school grounds outside the building. ***Shamberg v. State***, 762 P.2d 488 (Alaska Ct. App. 1988).

The discovery of marijuana by school officials in a student's automobile was upheld where the principal and security officer were found not to be acting as agents of the police when they conducted the search, despite a police officer's presence on school grounds. ***People in re P.E.A.***, 754 P.2d 382 (Colo. 1988).

A high school principal and security officer were not acting as agents of the police when they initiated a search of a student's car following information received from a police officer where the officer did not participate in the search and was unaware that it had occurred while he was on campus. ***In re F.M.***, 754 P.2d 390 (Colo. 1988).

Strip Searches

A strip search was performed by a teacher and a dean on a high school student in a program for youngsters with behavior disorders after he was observed to have an unusually large bulge in his crotch and was suspected of "crotching" drugs. Despite the lack of evidence resulting from the search, and his mother's refusal to consent to it, the search was upheld as reasonable and justifiable at its inception. It was undertaken after the student was observed outside the school building in violation of school rules and the large bulge was confirmed by a teacher and an aide. The teacher and dean observed the student change into a gym uniform in a locked locker room and inspected his body, asking him to hold up his testicles for further examination of his crotch. ***Cornfield by Lewis v. Consolidated High Sch. Dist. No. 230***, 991 F.2d 1316 (7th Cir. 1993).

A strip search, including looking inside a student's underwear, was held to be unreasonable when related to suspicion of stealing money from a teacher's purse. Although the school social worker who conducted the search had reasonable cause justifying the search, the danger of stealing money was not found to have posed a threat similar to possessing weapons or drugs. Thus, absent immediate or apparent danger, the circumstances did not call for an extensive and complete strip search. ***State v. Mark Anthony B.***, 433 S.E.2d 41 (W. Va. 1993).

A high school student was searched by a security guard who was a former detective with the Cincinnati police department after a strong odor of marijuana was detected about his person by a classroom teacher and another security guard. With the student's permission, the authorities initially searched his bag as well as a coat he was not wearing. The search continued with a pat down under his arms and then with his agreeing to empty his pockets. When these actions failed to reveal any contraband, the search became increasingly intrusive as he was asked to lift his shirt, remove his shoes and socks, and to lower his pants after it was confirmed that he was wearing gym shorts under his pants. All of these procedures were completed without evidence of drug possession. While the student subsequently claimed to have been embarrassed by the intrusiveness of the search in violation of his Fourth Amendment rights, consistent with ***T.L.O.***, the search was found to be justified at its inception and reasonably related in scope to the circumstances at hand. ***Widener v. Frye***, 809 F. Supp. 35 (S.D. Ohio 1992).

After determining that a report by an informant was reasonable and justified, the principal confronted two students who had been implicated in drug use. The students' lockers, books, and purses were searched, and when no drugs were found, one of them was asked to remove her T-shirt and lower her jeans in the presence of the AP and school secretary. The search was upheld as reasonable based on the information provided by the informant. ***Williams ex rel. Williams v. Ellington***, 936 F.2d 881 (6th Cir. 1991).

During the search by an AP of a student who was suspected of possessing a knife, a plastic bag was discovered and searched for drugs; the search for the knife was justified, but the search for the drugs was struck down as it was not based on reasonable suspicion. ***T.J. v. State***, 538 So. 2d 1320 (Fla. Dist. Ct. App. 1989).

A search of a student by a resource officer serving a dual role as a school official and a law enforcement officer did not support a search absent probable cause when the request to search was made by a police officer. ***F.P. v. State***, 528 So. 2d 1253 (Fla. Dist. Ct. App. 1988).

A student who was in a classroom with only one other child while the remainder of the class was outside for physical education was called to the front of the room by the teacher and instructed to remove her socks when six one dollar bills from a class fund was found to have been missing. Although the money was never found, the teacher's action was upheld as reasonable and justified at its inception. ***Wynn v. Board of Educ. of Vetavia Hills***, 508 So. 2d 1170 (Ala. 1987).

Where a student whose name had been mentioned in staff conversations regarding drug use and sales in school was searched by the principal after being found in the school bleachers during class hours, the principal's actions did not meet the standards of reasonableness on which a search should be conducted since the student was not engaged in suspicious activity when he was discovered in the bleachers. ***In re Pima County Juvenile Action No. 80484-1***, 733 P.2d 316 (Ariz. Ct. App. 1987).

A student who had been in the parking lot acting suspiciously- attempting to avoid detection by "ducking" behind a parked car and by giving a security guard a name other than her own-was taken to the office of the AP where she was requested to dump the contents of her purse, turn her jean pockets inside-out, remove her jeans, and was otherwise "visually inspected." Although school officials claimed that the search was justified because they believed that she was in possession of drugs, the court reasoned that while her conduct created reasonable grounds for suspecting that some school rule or law had been violated, it did not necessarily imply possession of drugs. Thus, in ruling for the student, the court opined that the burden is on the school to establish that a student's conduct was such that it created a reasonable suspicion of a specific violation and that a search could be expected to produce evidence of that violation. ***Cales v. Howell Pub. Schs.***, 635 F. Supp. 454 (E.D. Mich. 1985).

Where a bus driver had observed two fifth-graders exchanging something on the playground, she suspected drugs and, although she was not able to identify any of the materials, reported the incident. Both students were later removed from class and patted down; one of the students was required to strip. Although school officials claimed to have asked permission to search, the boys claimed that they were simply told that they were to be searched. The court ruled that consent would not have mattered due to the coercive circumstances and that the search met neither the probable cause nor reasonable suspicion standards. ***Bilbrey v. Brown***, 738 F.2d 1462 (9th Cir. 1984).

A high school student with a record of being in "theft-suspicious situations" was found in a classroom holding another girl's purse. She claimed it as her own until it was identified by another girl. In the AP's office, the owner was asked to empty the contents of her bag which contained a bus pass holder the AP believed revealed a hidden pipe. When the student grabbed the item, refused to surrender it, threw it on the floor, and made a tugging motion at the waistband of her blue jeans, she was subjected to a body search. The court not only ruled that as the intrusiveness of the search intensified, the standard of reasonableness approached probable cause, but also that the earlier search of the purse was unjustified because it was based only on the belief that something may have been stolen. ***M.M. v. Anker***, 607 F.2d 588 (2d Cir. 1979).

Fifth grade students were strip searched when a classmate complained that three dollars were missing from his coat pocket and the teacher had reason to believe that someone in the class had stolen the money but did not suspect any particular pupil. The search was held to be unconstitutional, requiring the existence of facts giving the officials reasonable particularized suspicions as a predicate for a search; the court noted that the exclusionary rule did not limit civil remedies but concluded that neither compensatory nor punitive damages were permissible because bad faith had not been proven. ***Bellnier v. Lund***, 438 F. Supp. 47 (N.D.N.Y. 1977).

Eight students were subjected to a warrantless strip search assisted by police, following a complaint that a student's ring was missing. Where the students were coerced into cooperating and the search proved fruitless, their right to sue the superintendent for unreasonable searches was upheld. ***Potts v. Wright***, 357 F. Supp. 215 (E.D. Pa. 1973).

Searches Less Intrusive Than Strip Searches

When T.L.O. was observed smoking cigarettes in a lavatory in violation of a school rule, she was brought to the office of the AP. Although her compan-

ion admitted to smoking, T.L.O. not only denied that she had been smoking, but she also denied that she was a smoker. Given this apparent conflict, the AP demanded to see her purse and, after opening it, found a pack of cigarettes, which he removed. Under the cigarettes was a package of rolling papers, which he associated with the use of marijuana. The AP proceeded to search the purse thoroughly, discovering a small amount of marijuana, a pipe, a number of plastic bags, a substantial quantity of money in one-dollar bills, a list of students who owed T.L.O. money, and two letters which implicated her in marijuana dealing. The State Supreme Court reversed in favor of T.L.O. and the Supreme Court granted *certiorari*.

After concluding that the search of the purse was not a violation of the Constitution, the only question addressed by the Court was the proper standard for assessing the legality of searches conducted by school officials. It held that the Fourth Amendment does apply to searches of students by public school officials, stating that the reasonableness of the search depends upon the context within which the search takes place. The Court recognized that the search was a substantial invasion of privacy, and observed that absent any wrongdoing, T.L.O. would have had a legitimate expectation of privacy as to the contents of her handbag. However, it noted that since school officials have a substantial interest in maintaining order and discipline in the schools, they are not required to obtain a warrant before searching a student under their authority. Also, they are not held to the requirement that searches be based on probable cause that a law has been or is being violated. Rather, the legality of the search depends on reasonableness, involving a determination of whether it was justified at its inception, and whether it was reasonably related to the circumstances that justified the interference in the first place. The Court held that under ordinary circumstances the search of a student is justified at its inception where there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or school rules. ***New Jersey v. T.L.O.***, 469 U.S. 325 (1985).

Where a student was found to be in possession of a jacket that was suspected to be stolen, the AP took the jacket and the student asked if he could have his personal property from within its pockets. The AP complied, but upon removing the contents noted that the student was in possession of four vials of crack cocaine. The student's motion to suppress the evidence on the basis that his personal possessions were unreasonably searched was denied and the actions of the AP were held to be reasonable under the circumstances. ***In re Ronnie H.***, 603 N.Y.S.2d 579 (N.Y. App. Div. 1993).

A pre-announced search by school personnel of a student's hand luggage prior to boarding a bus for a field trip was found to be reasonable where the advanced warning provided ample opportunity for students to remove any contraband or embarrassing items that might be located and exposed through such a search. The court found the search to be justified at its inception by the school's duty to provide discipline, supervision, and control in conjunction with the unique burden placed on school personnel in the context of a field trip away from school. ***Desilets v. Clearview Regional Bd. of Educ.***, 627 A.2d 667 (N.J. Super. Ct. App. Div. 1993).

Where a student was subjected to a pat down search by a school resource officer paid by the sheriff's office at the request of the school principal, cocaine was found in his pocket. The adjudication of delinquency was reversed since the school had failed to establish probable cause for the search and because the search was conducted by a law enforcement officer without independent information or prior investigation. Reasonable cause did not apply. The request made by the school principal to the school resource officer did not remove the probable cause standard when the officer acted on the word of the principal alone in performing a search. ***In re A.J.M. v. State***, 617 So. 2d 1137 (Fla. Dist. Ct. App. 1993).

The investigative touch of the outside of a student's book bag was affirmed where the search was reasonable following the sound of a metallic thud when the bag was put down. Although the thud was insufficient to furnish reasonable suspicion that the bag contained a weapon, it did justify investigative touching of the bag which subsequently led to a reasonable search of its contents. ***In re Gregory M.***, 606 N.Y.S.2d 579 (N.Y. 1993).

The frisk of a juvenile by a high school security officer was justified after the student was found in an "off limits" area and the officer accidently felt an object in his waistband. When the student was

unable to produce his identity c[illegible], the officer began to physically lead him to the security office by the elbow. During this activity, the officer's arm made contact with an object in the student's waistband, alerting the officer to the possibility that he was in possession of a contraband object. The frisk search was then conducted, resulting in the recovery of a revolver from the young man's waistband. ***In re Kevin P.***, 587 N.Y.S.2d 730 (N.Y. App. Div. 1992).

When a student in a school hallway who was holding a clear plastic bag and a wad of loose bills was asked by a plain clothes police officer to empty his pockets, which he did without removing a plastic bag, there was reasonable suspicion to justify a more intrusive search of his jacket pockets. ***In re S.F.***, 607 A.2d 793 (Pa. Super. Ct. 1992).

The search of a student's book bag was held to be reasonable based on specific information reported to the guidance counselor, the student's previous discipline record for possession, and the danger of controlled substances-even though the student denied ownership of the bag and its contents which had every indication of being his. ***State v. Moore***, 603 A.2d 513 (N.J. Super. Ct. App. Div. 1992).

A police officer had probable cause to search a student for weapons following a report by another student that one of the five individuals in a group was in possession of a gun. The court applied the totality of circumstances standard and held that a cursory search for dangerous weapons was not only reasonable, but was constitutionally compelled. ***In re Alexander B.***, 270 Cal. Rptr. 342 (Cal. Ct. App. 1990).

When an AP stopped a student in the hallway and asked to see his hall pass, the student ignored the request and continued walking while clutching a book bag. The student eventually stopped and indicated that he had returned from the parking lot, a place where recent thefts had occurred. When the AP became suspicious in light of this admission and the student agreed to open the bag, a gun was revealed therein. The search was upheld since the AP had reasonable suspicion to believe that the student was involved in something illegal. ***Coffman v. State***, 782 S.W.2d 249 (Tex. Ct. App. 1989).

Where a student was removed from class, questioned, and had her personal possessions searched by a school official and a police liaison officer, the search was upheld under "reasonableness" as the appropriate standard due to the student's presence in areas where thefts had occurred (although her classes were not scheduled there) and due to her conduct during questioning. ***Cason v. Cook***, 810 F.2d 188 (8th Cir. 1987).

After the dean of students received an anonymous call from an informant who claimed to have discovered in her daughter's possession marijuana cigarettes that had been purchased from a student at the school who kept the drugs in a box in his locker, the dean located the student and had him open his locker, wherein was revealed a box of marijuana cigarettes. Martens, the student, was brought to the office, but following questioning he refused to consent to the search until his parents had been contacted. After forty-five minutes had passed and his parents still could not be contacted, a deputy, who was there on another matter, told the student that it would be to his advantage to cooperate. Martens complied and marijuana residue was found on a pipe he had on his person, leading to his suspension pending a hearing at which it was decided to expel him for the remainder of the school year. Yet no record of the hearing was placed in his permanent records nor were criminal charges brought against him. Citing ***T.L.O.***, the court concluded that the school officials had reasonable suspicion to conduct the search and maintained that there was reason to believe the accuracy of the tip and that the search was not excessively intrusive. The court was also of the opinion that the presence of the police officer did not result in police action and therefore no warrant was required. ***Martens v. District No. 220, Bd. of Educ.***, 620 F. Supp. 29 (N.D. Ill. 1985).

A search of a student who unlawfully possessed marijuana was unconstitutional where the student was tardy to class, engaged in furtive gestures, attempting to hide his calculator case from view of a public school official, and demanded that school officials acquire a warrant prior to the search. The court concluded that the school official lacked a reasonable basis for the search since he had no prior knowledge or information relating the student to possession, use, or sale of illegal drugs or other contraband. As a result, the evidence obtained from the search was inadmissible in the proceedings of the juvenile court. ***In re William G.***, 709 P.2d 1287 (Cal. 1985).

Absent any suspicion, a general search of students' luggage prior to a band concert tour was unreasonable and unjustified where the court noted that if a group is sufficiently large, there is a statistical probability that someone will have contraband, but that the Fourth Amendment demands more than a generalized probability. ***Kuehn v. Renton Sch. Dist. No. 403***, 694 P.2d 1078 (Wash. 1985).

After a student was seen exchanging money and plastic bags believed to contain marijuana with another student, they were both questioned. Several involved persons were given forms to sign indicating notice of intent to suspend, and they were requested to empty their pockets. Although no drugs were found on Tarter, he was moved to another room and searched when an official believed he detected the odor of marijuana on his breath. When Tarter was asked to remove his pants, he refused. Police were summoned, but Tarter's parents arrived first, took him, and left. He was subsequently expelled for the balance of the semester. The actions of the school were upheld as constitutional on the ground that particularized suspicion existed in spite of the fact that evidence was to be turned over to the police. Also, in denying attorney's fees the court cited ***Christiansburg Garment Co. v. EEOC,*** 434 U.S. 412 (1978), holding that the student had been unable to establish that the case was frivolous, unreasonable, or without foundation. ***Tarter v. Raybuck***, 742 F.2d 977 (6th Cir. 1984).

Students with cigarettes in an off-limits area were searched after they were observed by a teacher, but other than the possession of cigarettes, there were no other signs of suspicious behavior such that anything more than confiscating the cigarettes was unreasonable. As a result, evidence derived from the search was suppressed at a delinquency hearing. ***T.A. O'B. v. State***, 459 So. 2d 1106 (Fla. Dist. Ct. App. 1984).

The search of a student based on his friendship with a class mate who had fainted from drug use was not based on reasonable suspicion because while the student turned a weapon over to the AP during the search, it was the product of an illegal search. ***R.J.M. v. State***, 456 So. 2d 584 (Fla. Dist. Ct. App. 1984).

Party poppers, a form of small legal firecrackers, were set off by a number of students, disrupting the learning environment. Once apprehended, several students identified the plaintiff as the source of the firecrackers. When she refused to open her purse for school officials, she was suspended for five days. While noting that students have a right to privacy interpreted in the light of common sense, the court held that since reasonable suspicion, or even probable cause, existed, no violation was present. Thus, the suspension was reasonable because it was in proportion to the gravity of the offense. ***Bahr v. Jenkins***, 539 F. Supp. 483 (E.D. Ky. 1982).

Upon returning to his high school three days after being threatened and coerced into producing a knife in his possession despite the lack of a warrant, a student classified as having a handicap under the EHA was suspended for ten days without notice or a hearing. At his request, a hearing took place over a week later, but he was not permitted to cross-examine witnesses and no effort was made to record the proceedings. About a week later he was arrested at school for the delivery of cannabis. In a prior criminal proceeding, the seizure was found not to have violated his Fourth Amendment rights. Here the court noted that collateral estoppel barred the current search violation claim, because the prior decision on a motion to suppress based on the Fourth Amendment prevented relitigation of the issue in a later section 1983 action. It further ruled that only under exceptional circumstances are damages available under the EHA, while no section 1983 action is cognizable because the EHA provides the exclusive remedy in cases involving the provision of a free appropriate public education to a child evaluated as being handicapped and in need of special education and related services. The court also found that the informal hearing provided to the student prior to his original suspension was adequate and that the formal hearing met minimum requirements. ***Reineman v. Valley View Community Sch. Dist.***, 527 F. Supp. 661 (N.D. Ill. 1981).

A student informer told the AP that he had observed what he believed was a drug transaction in study hall. The next morning, the involved parties were taken to the kitchen. When the plaintiff was asked to empty his pockets, he refused. Following several attempts to call his parents, the boy reluctantly agreed to the search which revealed a pipe and a small quantity of marijuana. His suspension from school and subsequent expulsion for the remainer of the year after a hearing was upheld where the court ruled that

he was provided adequate due process and that the search met the reasonable cause standard. ***M. v. Board of Educ.***, 429 F. Supp. 288 (S.D. Ill. 1977).

After a phone call led the principal to suspect that three students were in possession of illegal drugs, he called the police. When the police arrived, each girl was searched by the school nurse and the school psychologist, but no illegal contraband was found. The court ruled that at the time of the search the students had a constitutional right not to be searched by school officials who were in contact with the police, unless the extent of the intrusion occasioned by the search was justified by a compelling state interest in maintaining the order, discipline, safety, supervision, and education of the students within the school. Also, the officials were found not to have had immunity from civil rights liability when they disregarded settled constitutional rights or did so with malicious intent to deprive such rights or to otherwise injure the child. ***Picha v. Wielgos***, 410 F. Supp. 1214 (N.D. Ill. 1976).

Searches of Students Away from School

In a dance held off of school property, several students who were implicated in a drinking incident prior to their arrival at the dance were required to breathe into a monitor's face for an assessment of whether they had consumed alcohol. The smell of alcohol on their breath resulted in a five-day suspension and a transfer to another school in the district for 90 days, but since neither of these disciplinary actions required a formal hearing, they were upheld on appeal. However, the court did not uphold such disciplinary actions based on the perceived "effect" that students might experience following the consumption of alcohol outside of school and off school premises. Thus, the case was remanded for further proceedings related to the ability of the district to establish that the students were in fact "affected" by consumption of alcohol prior to a school dance. ***Martinez v. School Dist. No. 60***, 852 P.2d 1275 (Colo. Ct. App. 1992).

A student with a previous record of possible drug sales to another student and an admission to selling drugs off campus had his vehicle searched unreasonably. During this incident, the student was stopped by the AP for skipping school and although there was no connection between his skipping school and his past record, the AP chose to conduct a progressively intrusive search, beginning with a pat down, followed by clothing removal, a search of his locker, and a search of the student's car. The court held that the actions and resulting evidence were to be suppressed based on the excessive intrusion in light of the allegation of skipping school. Each step of the search was conducted without locating any evidence until the search reached the student's car. Thus, although cocaine was found in the trunk of the car, the evidence was suppressed. ***Coronado v. State***, 835 S.W.2d 636 (Tex. Crim. App. 1992).

Where the search of the hotel rooms of four students by a school official during a field trip was instituted following reports from chaperons that some of the students were drinking alcohol and may have had alcohol in their rooms, the court refused to dismiss a claim against the educator preferring to allow the jury to determine if the search was unreasonable due to a lack of individualized suspicion against the students who brought the claim. ***Webb v. McCullough***, 828 F.2d 1151 (6th Cir. 1987).

Where four students had been expelled from school for possession of dangerous drugs, two were arrested in their automobile by police officers acting on information received a number of hours before. The court upheld the validity of the board's policy of expelling students for possession of drugs, but held that the warrantless search of the car was unreasonable because the police officers had time to obtain a warrant and failed to do so. The two other students also were searched. Following a tip to police, the two other students were also immediately searched to prevent their escape or the destruction of evidence. Their expulsions were upheld on the ground that the board could take into consideration the marijuana discovered by police. ***Caldwell v. Cannady***, 340 F. Supp. 835 (N.D. Tex. 1972).

Drug Testing

A school district in a small rural community implemented a drug testing program through urinalysis for all students involved in a district sponsored athletic program designed to decrease drug and alcohol use among students in the community. All previous tac-

tics instituted by the district to decrease these substance abuse problems had been unsuccessful. The drug testing program was selected and required of all student athletes since a large percentage of the district's student body participated in athletics. In a suit by a student and his parents who claimed a violation of Fourth Amendment rights in light of the fact that the individual student had no history of drug abuse, the court upheld the policy based on several factors: (1) it was to be applied equally to all students who participated in district sponsored athletic programs; (2) less intrusive methods of decreasing drug and alcohol had proven ineffective; (3) safety was a primary concern of coaches for students using drugs and alcohol while participating in athletics; and (4) confidentiality was to be maintained in that test results would only be used to suspend a student from athletic participation. Further, positive drug tests would not be disclosed to criminal authorities or used as a basis for school disciplinary actions. ***Acton v. Vernonia Sch. Dist. 47J***, 796 F. Supp. 1354 (D. Or. 1992).

The urinalysis drug testing of bus attendants was constitutional absent individualized suspicion since it was not unreasonable to require testing where employees' duties involve direct contact with young children regarding their physical safety. Further, the court noted that the testing should be conducted as part of a routine, reasonably required, employment-related medical examination, and that there should be a clear nexus between the test and the employers' legitimate safety concern. ***Jones v. McKenzie***, 833 F.2d 335 (D.C. Cir. 1987), *cert. granted and vacated*, ***Jenkins v. Jones***, 490 U.S. 1001 (1989), on remand, ***Jones v. Jenkins***, 878 F.2d 1476 (D.C. Cir. 1989).

A policy requiring all children in grades six through twelve to submit to urinalysis if they were to participate in extracurricular activities was struck down where it was found to have failed to meet the reasonableness standard established in ***T.L.O. Brooks v. East Chambers Consol. Indep. Sch. Dist.***, 730 F. Supp. 759 (S.D. Tex. 1989).

Where students sought to enjoin the imposition of a school requirement that interscholastic athletes consent to random urinalysis testing in order to be eligible to compete in interscholastic sports, the court found that the program was reasonable under Fourth Amendment standards and that the procedures available for students to challenge positive urinalysis test results satisfied due process requirements. ***Schaill ex rel. Kross v. Tippecanoe County Sch. Corp.***, 864 F.2d 1309 (7th Cir. 1988).

The urinalysis of all probationary teachers as a condition of consideration for tenure was unconstitutional absent individualized suspicion; the court applied the reasonable suspicion standard rather than probable cause, but found the board's action to fall below the "floor of federal protection." (at 465). ***Patchogue-Medford Congress of Teachers v. Board of Educ. of the Patchogue-Medford Union Free Sch. Dist.***, 517 N.Y.S.2d 456 (1987).

The use of urinalysis drug testing was not permitted where a student's consent was improperly obtained since the test would not necessarily have supplied the information it was intended to provide and since it was used to gather rather than to confirm other evidence. ***Anable v. Ford***, 663 F. Supp. 149 (W.D. Ark. 1985).

A school's policy of requiring students to submit urine samples for drug testing violated the students' right to be free of unreasonable search and seizure. ***Odenheim v. Carlstadt-East Rutherford Regional Sch. Dist.***, 510 A.2d 709 (N.J. Super. Ct. 1985).

Right to Privacy

A county superintendent was found guilty beyond a reasonable doubt for inappropriate expenditures, and all evidence seized from his office was found to be not suppressible since not only was it obtained through a reasonable search consistent with the school code but also because no prior motion at the trial level was filed to suppress it. Therefore, his expectation of privacy under the Fourth Amendment could not be resolved on appeal. ***People v. Gornick***, 591 N.E.2d 39 (Ill. App. Ct. 1992).

A case study/term paper written by a teacher that in part criticized her principal had been distributed to several individuals, including some in her building. The principal felt duty-bound to see the paper and he informed the teacher that failure to provide the paper would be an act of insubordination. Following a semiformal hearing, the teacher reluctantly made the paper available, but later alleged a violation of the Fourth Amendment, among other claims. The court

held that since the teacher had not exhibited an expectation of privacy in the paper, the administration had not violated her constitutional rights. ***Alinovi v. Worcester Sch. Comm.***, 777 F.2d 776 (1st Cir. 1985), *cert denied*, 479 U.S. 816 (1986).

Miscellaneous

A New York requirement that on-site visits be performed prior to approving home-school programs challenged under a variety of laws, including the Fourth Amendment, was upheld on the grounds that the state had not been involved in forcible inspections of premises, that consent to inspect was always acquired prior to conducting an inspection, and that permission to inspect was not a condition to approval. ***Blackwelder v. Safnauer***, 689 F. Supp. 106 (N.D.N.Y. 1988).

Consent by a student to be searched was valid after he was confronted by the principal since the student volunteered to be searched by responding, "You can search me if you want to." ***In re Corey L.***, 250 Cal. Rptr. 359 (Cal. 1988).

Mass searches of students without reasonable and individualized suspicion are unjustified. ***Burnhan v. West***, 681 F. Supp. 1160 (E.D. Va. 1987).

After what appeared to be a drug transaction, two students were questioned by a school police officer, but one of the boys, who refused to cooperate and was obviously nervous, attempted to leave the scene and was physically detained. While attempting to restrain the student, the officer discovered a gun in his waistband. He was then wrestled to the ground, handcuffed, and taken to the dean's office. Despite the student's claim of a Fourth Amendment violation, the officer's action was upheld under the reasonable suspicion standard. ***In re Frederick B.***, 237 Cal. Rptr. 338 (Cal. Ct. App. 1987).

Detaining students who had previously been disciplined for possession and for being under the influence of drugs was found to be reasonable after a school security guard observed their exchange of money near a classroom building. The court rejected the position that probable cause, rather than reasonable suspicion, should be applied. ***In re Robert B.***, 218 Cal. Rptr. 337 (Ct. App. 1985).

After school officials had installed a two-way mirror in the boy's bathroom, Stern was observed buying marijuana from another boy. Although he was told that if he cooperated, the police would not be notified, the other student denied the charges and as a result, both were turned over to the police. Stern was suspended for the rest of the semester following a hearing. After observing that only limited surveillance of the restroom had occurred and that only a school disciplinary action resulted, the court ruled that when the student's privacy interests were weighed against the school's duty to maintain order in the school environment, the facts did not support a claim of a Fourth Amendment violation. ***Stern v. New Haven Community Schs.***, 529 F. Supp. 31 (E.D. Mich. 1981).

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Case Citations
Negligence

SEVENTEENTH Series, Number 3

Prepared by William Evans
Smithtown Central School District, Smithtown, New York

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Off School Property and After School Hours

Where a drum major attempted to light a fire-baton with gasoline/kerosene fuel and some of the fuel ignited injuring a majorette from a visiting school, summary judgment in favor of the district was reversed since there was a genuine issue of material fact as to whether the band director had acted in a wanton or reckless manner. ***Minnick v. Springfield Local Schs. Bd. of Educ.***, 611 N.E.2d 926 (Ohio Ct. App. 1993).

Where a fourth-grade student was injured in an after-school altercation when he returned to the building to find his sister, judgment in his favor was reversed since there was nothing to indicate that the school sanctioned the presence of students on school grounds after dismissal. The court reasoned that while it is foreseeable that parents will occasionally send children back into the building, it is unreasonable and unworkable to require a school to immediately intercept such children. ***Hickingbottom v. Orleans Parish Sch. Bd.***, 623 So. 2d 1363 (La. Ct. App. 1993).

A female middle school student who was working on a science project was physically and sexually assaulted after school by three male students who, upon leaving after-school detention, had been seen in the halls and were advised to leave the premises, although they were not formally escorted out of the building. The court reasoned that since the attacks were unforeseeable, the district owed the student neither the duty of protecting her nor of escorting the three male students from the building. The court also found that the district was not liable for failure to provide adequate care, supervision, or protection. ***Williams v. Columbus Bd. of Educ.***, 610 N.E.2d 1175 (Ohio Ct. App. 1993).

Where an elementary school student who was struck in the eye with a screwdriver thrown by another pupil on school grounds while class was not in session, the district was not liable because not only was the suit unable to show that the district had notice of the condition which caused his injuries (since the screwdriver was not school property) but also because there was no evidence indicating how long the screwdriver had been on the playground. ***Mix v. South Seneca Cent. Sch. Dist.***, 602 N.Y.S.2d 467 (N.Y. App. Div. 1993).

In a wrongful death action by the estate of a deceased student against a school district and the driver who operated a van on a school-sponsored ski trip in which the student's estate alleged that the district negligently entrusted the pupil's transportation to the parent who drove the van, the district was granted summary judgment on the grounds that reasonable minds could differ as to whether the parent was an agent of the district. ***Kelly v. Great Neck Union Free Sch. Dist.***, 597 N.Y.S.2d 136 (N.Y. App. Div. 1993).

In an apparent robbery attempt during which a student was shot as he tried to drive out of a school's parking lot after an evening football game, the board was liable because although the board claimed that the shooting actually took place a few feet off of school property, its duty to maintain the safety of the parking area was found not to have ended merely because the injury occurred a few feet beyond its property line. ***Gutierrez v. Dade County Sch. Bd.***, 604 So. 2d. 852 (Fla. Dist. Ct. App. 1992).

Where a mother brought suit based on the severe injuries sustained by her daughter while on a school field trip with her kindergarten class, the court ruled that the state agency which owned the playground could not be held liable for the injuries suffered by the child when she was struck by a large metal swing. However, the board was found negligent in allowing kindergarten students to use swings which posed an unreasonable risk of harm to small children. ***Glankler v. Rapides Parish Sch. Bd.***, 610 So. 2d 1020 (La. Ct. App. 1992).

Where a high school student with an emotional disability was taken from her school by other pupils, five of whom raped her, summary judgment in favor of the board was reversed since there were issues of material fact as to whether the school breached its duty to supervise students adequately. ***Doe v. Escambia County Sch. Bd.***, 599 So. 2d 226 (Fla. Dist. Ct. App. 1992).

Where a student stood outside of his high school as members of a neighborhood gang surrounded him, forced him into the street, and shot him, the court found for the district. It rejected a rigid interpretation of foreseeability since, in light of the circumstances,

the school had taken a variety of precautions to minimize gang-related problems. ***Brownell v. Los Angeles Unified Sch. Dist.***, 5 Cal. Rptr.2d 756 (Cal. Ct. App. 1992).

Where a student was attacked and raped after being directed to wait in front of her school before it opened so that she could be transported to an arts program, judgment in favor of the board was reversed and it was deemed a matter for trial as to whether the board breached its duty to supervise the student. ***O'Campo v. School Bd. of Dade County***, 589 So. 2d 323 (Fla. Dist. Ct. App. 1991).

Where a junior high school student alleged that he was sexually molested by his mathematics teacher while enrolled in a work-experience program that included helping the teacher correct papers in the teacher's apartment, the court found that the district could not be held vicariously liable for the alleged molestation since it took place in an apartment while the student was under the supervision of the teacher. ***John R. v. Oakland Unified Sch. Dist.***, 256 Cal. Rptr. 766 (Cal. 1989).

Where a teacher had allowed an eleven-year-old female special education student and three male classmates to leave her supervision and walk to a nearby nature center to wash their hands, the girl's parents brought suit for damages following her alleged sexual abuse. The court held the teacher's action as an exercise of professional judgment, not a policy decision which would be protected from liability. However, a lack of immunity was not found to have made the teacher and her school liable. ***Borne v. Northwest Allen County Sch. Corp.***, 532 N.E.2d 1196 (Ind. Ct. App. 1989).

Where a high school senior was killed after she fell from a homecoming float which was being towed to the site of a parade, the school district was found to be immune from liability as there was an implied authorization to sponsor such a program and the district's decision regarding supervision of the event was within the exercise of its governmental function. ***Eichhorn v. Lamphere Sch. Dist.*** 421 N.W.2d 230 (Mich. Ct. App. 1988).

Where a genuine issue of material fact was present as to whether a milling machine in a high school shop class was a fixture, summary judgment in favor of the district was precluded. ***Velmer v. Baraga Area Schs.***, 424 N.W.2d 770 (Mich. Ct. App. 1988).

Where a sixteen-year-old student who was rendered quadriplegic after falling from gymnastic rings during his gym class brought suit against the district, the real estate exception to governmental immunity was found inapplicable since a defect in the property is not the cause of an injury if it only facilitates the acts of others, as in this case where the injury was a result of the student's own actions. ***McCloskey v. Abington Sch. Dist.***, 539 A.2d 946 (Pa. Commw. Ct. 1988).

School Settings During School Hours

Where a student's leg was broken in a fight with two other pupils outside of their classroom, his middle school teacher was found to have failed to respond appropriately to his pleas of harassment by failing to exercise slight care. ***Smart v. Hampton County Sch. Dist.***, 432 S.E.2d 487 (S.C. Ct. App. 1993).

Where a high school student who was severely beaten by two fellow pupils had complained to the principal that the pupils had assaulted him on two previous occasions, the district, principal, and a teacher were not liable for negligent supervision since the court explained that the legislature had spoken clearly on the issue of immunity and that the injury arose out of a battery, not a failure to supervise. ***Ledfors v. Emery County Sch. Dist.***, 849 P.2d 1162 (Utah 1993).

An action for damages by a junior high school student who was pushed in the hallway by another pupil was unsuccessful where the injury was held to be the result of the act of an intervening third party which could not reasonably have been anticipated. ***McGregor v. City of New York***, 602 N.Y.S.2d 669 (N.Y. App. Div. 1993).

Where a student was struck in the eye during morning recess by a dirt clod thrown by another student who had witnessed the throwing for a period of time before choosing to join in, implied assumption of risk did not bar the district from liability since there was a clearly defined legal duty on its part to prevent precisely what had occurred. ***Lucas v. Fresno Unified Sch. Dist.***, 18 Cal. Rptr.2d 79 (Cal. Ct. App. 1993)

Where a seventh-grade student was punched and injured by another pupil who had repeatedly tried to trip her as the two walked back to the first child's classroom from the cafeteria, the court held that it was up to the jury to determine whether the teacher supervising the students exercised a reasonable standard of care and whether the teacher's alleged negligence was the proximate cause of the injury. ***Roberson v. Duval County Sch. Bd.***, 618 So. 2d 360 (Fla. Dist. Ct. App. 1993).

In an action by a mother who was punched in the mouth by a pupil as she walked down a corridor in her son's school while picking up material her son needed for home study as he recovered from an injury, summary judgment in favor of the board was reversed where there were issues of fact as to whether the board was on notice because of the student's violent nature and past actions. ***Garufi v. School Bd. of Hillsborough County***, 613 So. 2d 1341 (Fla. Dist. Ct. App. 1993).

A student who suffered a severe beating from a classmate unsuccessfully brought a section 1983 action based on the notion that compulsory school attendance imposed an affirmative constitutional duty upon the school board, superintendent, or principal to protect him. The court reasoned that even though fights between students occurred on a regular basis, this was insufficient to establish that school officials should have known that he was in danger of assault. ***D.R. v. Middle Bucks Area Vocational Technical Sch.***, 972 F.2d 1364 (3rd Cir. 1992).

A high school student unsuccessfully brought a section 1983 suit against a district alleging its failure to protect her from repeated harassment and assaults by classmates where the court reasoned that since parents or guardians are the primary caretakers of pupils, the district had no special relationship with the student giving rise to such a suit. The court also reasoned that since the students who committed the acts were in no way connected with the state, there was no liability upon the district for its policies, customs, or practices. ***Elliott v. New Miami Bd. of Educ.***, 799 F. Supp. 818 (S.D. Ohio 1992).

In an action against a school board by a student who was struck violently by a classmate as he walked to class, the student claimed that the classmate who caused the injury had a propensity for violence yet was allowed to remain in the school unmonitored and uncounselled. In finding for the district, the court noted that while the student who caused the injury had been suspended for fighting and had been issued a warning concerning his future behavior, there was nothing in the record to indicate that the first incident should have put the school on notice of future violent behavior. ***Coleman v. Joyner***, 593 So. 2d 451 (La. Ct. App. 1992).

Where a high school student was cut by a knife during a fight with another pupil during lunch the court found no evidence that the district had specific knowledge that a fight was occurring or would occur and then failed to intervene in a timely manner. Thus the district's choice on the number and allocation of security personnel involved matters of discretion for which it was protected by statutory immunity. ***Mosley v. Portland Sch. Dist. No. 1J***, 843 P.2d 415 (Or. 1992).

On a day when bad weather necessitated classes staying indoors for a noon recess period, a student in one of two sixth-grade classes being supervised by a single aide who would move between the classrooms was injured when a classmate pulled his chair out from under him. In a negligence action the district was found not to have been liable since the accident was the result of a sudden and unexpected prank which could not have been anticipated or prevented. ***Tomlinson v. Board of Educ. of the City of Elmira***, 583 N.Y.S.2d 664 (N.Y. App. Div. 1992).

A city and a board of education were found to have breached their voluntary special duty of care to protect a student from a neighborhood bully who was often seen on school grounds, who had threatened the student with harm, and who subsequently caused her death. ***Greene v. City of New York***, 566 N.Y.S.2d 40 (N.Y. App. Div. 1991).

A junior high school student failed to show negligent supervision by his principal and school board regarding injuries he sustained during recess after a classmate had picked him up and thrown him down on a concrete patio because although there was evidence of prior fights at the school, they had been in a grassy area. Further, the students were friends and the injured pupil had no knowledge of violent tendencies on the part of his classmate. ***Watts v. Wayne County Bd. of Educ.***, 412 S.E.2d 541 (Ga. Ct. App. 1991).

Where a student who had been cut by a small knife during an altercation with another pupil was injured more seriously in a later incident involving the same child, the court found no negligence in the assistant principal's inability to discover the identity of the assailant prior to the end of the school day. Also, the board's failure to provide written guidelines on a need to notify police of altercations involving knives was insufficient to prove a claim of negligent training. ***Sapp v. Effingham County Bd. of Educ.***, 409 S.E.2d 89 (Ga. Ct. App. 1991).

In an attempt to maintain discipline, a high school student's arm was broken when he was thrown to the ground by the aide to a New Mexico high school gym teacher. His civil rights action against the educators was unsuccessful since the right that he claimed was violated is not simply the right to be free from random unauthorized deprivations of liberty, but rather the right to be free from such deprivations in the absence of adequate post-deprivation remedies. ***Coriz v. Martinez***, 915 F.2d 1469 (10th Cir. 1990).

Where a sixth-grade student was injured when he was struck by a rock thrown by a fellow student during recess, the school could not have been expected to anticipate the intervening actions of a third party. ***Hauser v. North Rockland Cent. Sch. Dist. No. 1***, 560 N.Y.S.2d 835 (N.Y. App. Div. 1990).

In two cases with similar facts, an Alabama fourth-grade student was injured when struck by a rock thrown by another pupil and an Ohio first-grade student was struck in the eye by a dirt ball thrown by an older pupil. Denying the claims for damages, the courts found no amount of planned supervision by teachers would have prevented the unforeseeable accidents. ***Green v. Bester***, 568 So. 2d 792 (Ala. 1990); ***Allison v. Field Local Sch. Dist.***, 553 N.E.2d 1383 (Ohio Ct. App. 1990).

Parents who enrolled their son in a private school after he had a series of verbal and physical altercations with other pupils unsuccessfully brought suit against the school district for failure to provide a safe educational environment in violation of the state constitution's guarantee of a free quality elementary and secondary education. The district was immune from suit since the parents failed to show that school employees were not acting in the scope of their authority. ***Hayworth v. Sch. Dist. No. 19***, 795 P.2d 470 (Mont. 1990).

Where a teacher who found students fighting in a classroom picked up a plastic baseball bat and began hitting them, the pupils brought a civil rights action against the school district for failure to adequately monitor and supervise the teacher. Reversing summary judgment for the district, the court cited the district's knowledge of the teacher's prior violations of the corporal punishment policy and explained that its passivity in dealing with the teacher could constitute a section 1983 violation. ***Turley v. School Dist. of Kansas City, Mo.***, 713 F. Supp. 331 (W.D. Mo. 1989).

Where a nine-year-old student asserted a violation of her substantive due process rights when she was paddled seven times over a thirty-minute period the court found that although she was bruised by the spanking, she was not injured to a point which would "shock the conscience" of the court. Thus, while the number of swats may have been excessive and may have amounted to a violation of state tort law, they did not violate her right to substantive due process. ***Brown v. Johnson***, 710 F. Supp. 183 (E.D. Ky. 1989).

Where a student was injured when required to climb a rope ladder in physical education class, the provision of equipment by the school board was a discretionary act for which it could not be held liable. However, there were sufficient facts alleged to state a claim for wilful and wanton misconduct. ***Bowers v. Du Page County Regional Bd. of Sch. Trustees Dist. No. 4***, 539 N.E.2d 246 (Ill. App. Ct 1989).

An action for negligent supervision against two physical education teachers arising out of an incident in which an eighth-grade student broke his elbow when he slipped on a puddle of water while playing basketball was dismissed where the teachers were found to have exercised reasonable and proper supervision of students since both had been teaching at the school only a few weeks and neither was aware of a tendency for roof vents to leak water on the gym floor. ***Best v. Houtz***, 541 So. 2d 8 (Ala. 1989).

In a damages suit by a deaf student who injured his eyes while trying to add oil to a hydraulic lift, a teacher was found not to have owed the student a greater duty of care due to his deafness since the teacher had

instructed him on the rules of safety, one of which was to leave alone those things which did not pertain to that which he was doing. ***Payne v. Department of Human Resources***, 382 S.E.2d 449 (N.C. Ct. App. 1989).

Where neither a teacher nor the student he attempted to discipline by pulling his chair back were aware that three of four fasteners holding the chair seat to the frame were missing, the student fell to the floor and was injured. The student's damages suit failed as the teacher was found to have been attempting to maintain proper discipline and not grossly abusive with disregard for the health and safety of the student. ***Atkinson v. DeBraber***, 446 N.W.2d 637 (Mich. Ct. App. 1989).

Approximately two years after a thirteen-year-old student who had been administered corporal punishment was diagnosed as suffering from post-traumatic stress disorder, his parents unsuccessfully brought suit against the school district seeking recovery for his psychological and physical injuries when the court held that the three "licks" the student received were not so severe as to be in violation of state law or school board rules. ***Mathis v. Berrien County Sch. Dist.***, 378 S.E.2d 505 (Ga. Ct. App. 1989).

A personal injury action against a school board and the state on behalf of a student at a school for the mild and moderately retarded who, while walking toward the bus which was to take him home, had his arm pulled and jaw struck by another pupil was unsuccessful when the incident was found unforeseeable and therefore unavoidable. Also, his status as a foster child did not impose strict liability on the state or the school board for the acts of minor children. ***Gooden v. State Dept. of Health and Human Resources***, 546 So. 2d 279 (La. Ct. App. 1989).

Where a teenager who was later determined to be insane shot and killed his junior high school principal and wounded three other people, a teacher and a student, each of whom had been shot in the leg, brought an action against the school district and the teenager to recover for damages. Although the state Worker's Compensation act barred the teacher's action against the district, the jury was allowed to apportion fault to the school district. ***Williams v. Kearbey***, 775 P.2d 670 (Kan. Ct. App. 1989).

After a student left his classroom without permission and was approached by a fellow pupil, the two had an exchange of words leading to his allegedly striking and injuring the second child, who then brought suit against the district. The district's motion for summary judgment was granted as there was no factual basis that it had actual knowledge constituting notice of a specific danger at a particular time. ***Schlecker v. Connetquot Cent. Sch. Dist.***, 541 N.Y.S.2d 127 (N.Y. App. Div. 1989).

A school district's motion to dismiss a negligence action was denied where a student who was injured in an altercation with an older pupil during recess alleged not only that he told his teacher that the second child had tripped him shortly before he was attacked and that she had taken no action but also that the lunchroom aides, in violation of written rules, sat on a bench talking with each other during the incident. There was also the question of whether the teacher and the principal should have foreseen the possibility of the fight. ***James v. Gloversville Enlarged Sch. Dist.***, 548 N.Y.S.2d 87 (N.Y. App. Div. 1989).

Where an eighth-grade student was injured while trying to break up a fight between two of his classmates, his action against the district and his classmates was dismissed for failure to state an action since the "danger invites rescue" doctrine did not apply in so far as there was no testimony that the fighting students were actually at risk of serious injury or that the alteration rose to the level of a perilous situation which invited rescue. ***Ha-Sadi v. South Country Cent. Sch. Dist.***, 539 N.Y.S.2d 47 (N.Y. App. Div. 1989).

Where a six-year-old student was injured by a classmate during horseplay which occurred as the pupils were preparing to enter their classrooms, sovereign immunity was not an appropriate defense for the negligent performance of an operational duty since the claim was not that an inadequate number of supervisory personnel were assigned but that the principal had negligently failed to carry out an operational duty to deploy personnel in accord with the school board manual. ***Bonica v. Dade County Sch. Bd.***, 549 So. 2d 220 (Fla. Dist. Ct. App. 1989).

Where a principal broke the arm of an eight-year-old student on whom he attempted to impose corporal punishment, it was a matter for the jury to decide whether he exercised sound discretion in the adminis-

tration of the punishment and whether it was excessive or unduly severe. ***Crews v. McQueen***, 385 S.E.2d 712 (Ga. Ct. App. 1989).

A school district was negligent where it allowed a twelve-foot slide on an asphalt surface in a playground without protective padding or protective railings since this disregarded the safety of children. ***Kirby v. Macon Pub. Sch. Dist. No. 5***, 523 N.E.2d 643 (Ill. App. Ct. 1988).

Where a student was injured during a swimming class when he fell after a teacher lifted him to question him about the use of language, it was a matter for a jury to decide whether the teacher had exceeded the degree of force needed to correct the breach of discipline. ***Metzger v. Osbeck***, 841 F.2d 518 (3d Cir. 1988).

Two students unsuccessfully claimed violations of due process over punishments administered while they were in school. One received two licks on the buttocks with a wooden paddle while the other was placed in an in-school suspension for three days as a result of unexcused absences. In both instances, the punishments were upheld as they were found not to have violated the student's due process rights. ***Wise v. Pea Ridge Sch. Dist.***, 855 F.2d 560 (8th Cir. 1988).

Where a school district failed to attach a warning flag to a cable at the entrance to a school's play area it was liable for willful and wanton misconduct. ***Lejeune v. Acadia Parish Sch. Bd.***, 517 So. 2d 1030 (La. Ct. App. 1987).

Sexual Abuse

The mother of a high school student who had been sexually abused by one of her male teachers sought further review of the dismissal of their action against the district for failure to supervise the teacher's behavior adequately. Judgment was affirmed in favor of the district where the court reasoned that even though the teacher's conduct led to his resignation and even though he spent time in jail because of his guilty plea to a charge of endangering the welfare of a minor, it was clearly outside of the scope of his employment such that the doctrine of respondeat superior was inapplicable to hold the district liable. ***Mark KK v. Jack LL***, 611 N.Y.S.2d 347 (N.Y. App. Div. 1994).

A high school student who was sexually assaulted by her teacher unsuccessfully brought a section 1983 action against a school board and a principal where there was no affirmative link to connect either the district or the principal to the abuse. While there may have been negligence on the part of the defendants to investigate adequately rumors of inappropriate conduct by the teacher, under 1983 there must have been a deliberate deprivation of constitutional rights. ***Gates v. Unified Sch. Dist. No. 449***, 996 F.2d 1035 (10th Cir. 1993).

Where children who were allegedly sexually molested by their school bus driver brought a section 1983 action against the driver, the bus company, its president, and the school superintendent, the court granted summary judgment in favor of the defendants associated with the bus company as they were determined not to have been acting under the color of state law by providing transportation for students to and from school. Judgment in favor of the superintendent was also appropriate as there was no evidence that he had acted with deliberate indifference or had maintained a policy which directly caused constitutional harm. ***Black v. Indiana Area Sch. Dist.***, 985 F.2d 707 (3d Cir. 1993).

A student who was allegedly sexually abused by a teacher was able to support a civil rights claim based on the actions of the administrators where there were numerous allegations of abuse of other female students by the teacher before and during the time the student was abused. Also, it was alleged that they concealed knowledge of the teacher's past sexual conduct and the existence of the reporting act from another victim and her mother. ***Doe v. Board of Educ. of Hononegah Community High Sch. Dist. #207***, 833 F. Supp. 1366 (N.D. Ill. 1993).

Where an eighth-grade student told her teacher of a threat of sexual assault made by another pupil who actually assaulted her three days later, her unsuccessful section 1983 action against the teachers and the school board was premised on their failure to protect her from attack. The court held that even if public schools have some duty under state law to protect students, it does not place an affirmative burden of the fourteenth amendment due process clause upon the teachers and administrators as there must be an underlying constitutional deprivation before section 1983 liability may attach for an indifferent policy or

custom. However, the issue of whether the teachers were grossly negligent was deemed a matter for trial. ***B.M.H. v. School Bd. of the City of Chesapeake***, 833 F. Supp. 560 (E.D. Va. 1993).

A school district was denied summary judgment over the sexual assault of students by their teacher where the court held that the molestation of a child is presumed to result in a compensable physical injury even if the injury only manifests itself in psychological problems. ***A.C.R. v. Vara***, 625 A.2d 41 (N.J. Super. Ct. 1993).

Where a student who was sexually assaulted by two other students alleged a breach of duty of supervision, the court found for the student, pointing to the classroom teacher's violation of the school's safety regulations. In particular, the child was sent out of the class even though a bathroom in the room was available and even though the child's mother had established the potential for harm by complaining to the teacher about threats made to her daughter by one of the students involved in the assault. ***Shante D. v. City of New York***, 598 N.Y.S.2d 475 (N.Y. App. Div. 1993).

Where an eleven-year-old student went to the school office complaining of feeling ill and was unable to reach her father by phone, her uncle picked her up and subsequently raped her on the way home, causing serious physical and emotional injuries. Although the school board had a policy that students could not leave school premises during the day without the request of the parent/guardian and the approval of the principal, violation of the policy was not found to amount to negligence per se since the child had attempted to contact a parent, and showed no hesitancy in leaving with her uncle. Thus, under the circumstances, the school was determined not to have had notice that the person signing the child out posed a threat. ***Snider v. Snider***, 855 S.W.2d 588 (Tenn. Ct. App. 1993).

Where a first-grade student was sexually battered by a physical education teacher after her classroom teacher had allowed her to go unescorted to the bathroom, the school board was found to have had sovereign immunity from liability. Also, the court ruled that unless a defendant had reasonable grounds for believing a criminal act would be committed, the board could not be held liable in tort for the superseding criminal act by a third party. ***Thurmond v. Richmond County Bd. of Educ.***, 428 S.E.2d 392 (Ga. Ct. App. 1993).

A junior high school student's action for damages due to sexual molestation was reversed on appeal where the court denied that the school district had immunity from suit since it had an affirmative duty to take all reasonable steps to protect its students from sexual assaults by teachers. ***Virginia G. v. ABC Unified Sch. Dist.***, 19 Cal. Rptr.2d 671 (Cal. Ct. App. 1993).

Where parents of a fourth grade student brought a 1983 action against the school board following the sexual molestation of the student by her teacher, summary judgment was upheld in favor of the district, since it was uncontroverted that the board neither engaged in any affirmative acts nor tolerated, condoned, nor encouraged any such acts of abuse; also, it had no notice of the allegations against the teacher until after he was suspended from his position. ***Jones v. Board of Educ. of Sch. Dist. 50***, 854 P.2d 1386 (Colo. Ct. App. 1993).

Where a high school student brought a civil rights suit alleging a violation of due process and equal protection due to her being sexually molested by her teacher, the court found it incontrovertible that such a molestation rises to the level of constitutional deprivation of due process. The court reasoned that based on their deliberate indifference to the notice they had been given, the administrators breached their constitutional duty to protect the student. ***Doe v. Taylor Indep. Sch. Dist.***, 975 F.2d 137 (5th Cir. 1992).

The 1983 action of six Missouri elementary school students alleging sexual abuse at the hands of their teacher was unsuccessful as the court found that the school board could not be held liable absent a showing that it either had knowledge of the teacher's unconstitutional behavior or that its procedures for addressing child abuse in its schools were inadequate. ***Thelma D. v. Board of Educ. of the City of St. Louis***, 934 F.2d 929 (8th Cir. 1991).

Where a high school student sued her school district and a school psychologist alleging that the psychologist sexually molested her it was deemed a matter for trial whether the existence of a custom, practice, or policy caused the deprivation of a consti-

tutional right warranting relief under section 1983 even though no special relationship was recognized which would have imposed an affirmative duty on the district to protect the student because the possibility of deliberate indifference was acknowledged. ***Doe v. Douglas County Sch. Dist. Re-1***, 770 F. Supp. 591 (D. Colo. 1991).

Where a fourth-grade student who was given permission by her teacher to go to a restroom down the hall was sexually assaulted by a man in a ski mask, her father successfully brought suit against the school board for a breach of its duty to provide an official policy against allowing young children to leave the classroom alone. ***Doe v. City of New Orleans***, 577 So. 2d 1024 (La. Ct. App. 1991).

Where a six-year-old girl with mental retardation was allegedly a victim of sexual abuse by a school bus driver, the district was not entitled to discretionary function immunity under the state Tort Claims Act as the board failed to follow mandatory child abuse reporting guidelines. ***Kansas State Bank & Trust Co. v. Specialized Transp. Serv. Inc.***, 819 P.2d 587 (Kan. 1991).

In a suit against a teacher and a principal following the alleged sexual assault of a kindergarten student, the court found that neither defendant had acted wantonly negligent in their supervision of the student. In addition, a constitutional claim under 1983 was rejected since, as a student, the Due Process Clause was not implicated where the child was neither incarcerated nor otherwise institutionalized. ***W.L.O. v. Smith***, 585 So. 2d 22 (Ala. 1991).

An elementary school student successfully brought a 1983 action against school officials to recover for their failure to prevent continuing attacks and abuse by other pupils where the court reasoned that while a single act of ordinary negligence may not form the basis of a civil rights claim, the allegation of seventeen separate incidents rises to the level of deliberate indifference to an affirmative duty. ***Pagano v. Massapequa Pub. Sch.***, 714 F. Supp. 641 (E.D.N.Y. 1989).

In a suit for negligent supervision brought on behalf of a twelve-year-old student who was accosted by three students and raped while en route between her social studies and art classes, the court found that the standard of care and supervision over pupils would be that of a reasonably prudent parent. Thus, in a school where two aides and two security guards were assigned to each floor, the teacher's actions were not determined to have met that standard. While the court recognized that a school is not the insurer of student safety, it ruled that the school was liable for a foreseeable injury proximately related to an absence of supervision. ***Logan v. City of New York***, 543 N.Y.S.2d 661 (N.Y. App. Div. 1989).

Where the parents of a child who was sexually abused by another child contended that the school district did nothing to control the child's behavior or to warn parents of children who were his potential victims, the court found for the district since it was unaware of the abuser's problems and since the parents were unable to cite a statute or a case imposing the duty they suggested the district breached. ***Morris v. Canipe***, 528 So. 2d 659 (La. Ct. App. 1988).

Where two elementary school students were sexually assaulted on school grounds by a teacher, the actions of the district and its officials were not found within the willful misconduct exceptions to immunity from state tort claims since the charges of gross and culpable negligence and wanton and reckless behavior were not seen as the legal equivalent of willful and intentional misconduct. ***Scott v. Willis***, 543 A.2d 165 (Pa. Commw. Ct. 1988).

Where the alleged negligence of a physical education teacher was at issue following a student's injury during wrestling class, his methods of teaching his class were not found substandard to the extent that they created an unreasonable risk of injury. ***Llorence v. Natchitoches Parish Sch. Bd.***, 529 So. 2d 479 (La. Ct. App. 1988).

Negligent Hiring

Where the mother of an eleven-year-old hearing impaired girl brought an action against a school district charging the negligent hiring and supervising of a bus driver alleged to have sexually molested the girl, the district was granted summary judgment since it did not have access to a criminal background check and was not required to make one at that time. Also, while the district supervisors neither knew nor suspected that the driver molested children, it took im-

mediate action when it was notified. ***Musgrave v. Lopez***, 861 S.W.2d 262 (Tex. Ct. App. 1993).

Where students who were sexually abused by their teacher brought an action against the teacher, the school board, and several school employees, it was held a matter for trial as to whether the hiring of the teacher came within the discretionary function exception to the Governmental Tort Liability Act. ***Doe v. Coffee County Bd. of Educ.***, 852 S.W.2d 899 (Tenn. Ct. App. 1993).

Students who charged that they had been molested unsuccessfully brought suit against the state and a local school district for providing credentials to a teacher who had allegedly been convicted of a prior sex offense where the statute in question was not found to have created a private cause of action for failure to deny credentials. ***State v. Superior Court***, 10 Cal. Rptr.2d 527 (Cal. Ct. App. 1992).

A school district in Oklahoma was not liable in a civil rights action for sexual molestation of three students by an elementary school teacher who had been on the job for three years because even though he had been convicted of sodomy in Texas ten years before he was hired, the acts of molestation were held to be too remote a consequence of the district's hiring and investigation policies. ***D.T. by U.T. v. Independent Sch. Dist. No. 16***, 894 F.2d 1176 (10th Cir. 1990).

A superintendent and a school board were not liable for negligent hiring and retention where a student who was allegedly sexually assaulted by the principal of her school brought suit because even though the principal had previously resigned from another school due to a similar accusation, his employment recommendations contained no evidence that he was a pedophile. Also, in so far as the principal's role in counseling a truant student was unrelated to sexual assault, he would have stepped out of the course and scope of his employment in assaulting the student. ***Medlin v. Bass***, 398 S.E.2d 460 (N.C. 1990).

Where, on a day prior to the start of the school year when faculty were allowed to come in to set up their classrooms, a teacher was assaulted by an individual who entered through a door wedged open with a glove to allow personnel access to the school, the board was protected by governmental immunity since its method of securing the building was a discretionary decision of the principal. ***Doe v. Board of Educ. of Memphis City Schs.***, 799 S.W.2d 1100 (Tenn. Ct. App. 1990).

Where a school bus driver sexually assaulted a kindergarten student on the way to school, the failure of the district and the bus company to investigate the driver's background constituted neither extreme and outrageous conduct nor a basis for liability on the ground of the infliction of emotional distress. ***Giraldi v. Lamson***, 563 N.E.2d 956 (Ill. App. Ct. 1990).

En route to and from School

Where a student who feared for her safety communicated her concern to a teacher but was still injured when assaulted by two students she had tried to avoid while leaving school, the court found this report, as well as the student's attempt to inform the security office of the threats, to be sufficient notice of a specific danger at a particular time such that the board of education was found to have breached its duty to provide adequate supervision when it was most critical. ***Mirand v. City of New York***, 598 N.Y.S.2d 464 (N.Y. App. Div. 1993).

Where a high school student sued her district for negligence after she was attacked by a nonstudent while riding the school bus home, the district was found to have exercised at least slight care in its responsibility to protect her and thus was not grossly negligent because not only had the driver notified the district director of transportation regarding an earlier conflict involving the student, but the director also contacted the students involved in the prior altercation and attempted to contact their parents. ***Clyburn v. Sumter County Sch. Dist.***, 429 S.E.2d 862 (S.C. Ct. App. 1993).

Where a student with a development disability was sexually abused by the cab driver contracted by the school district to transport her, it successfully advanced a defense of sovereign immunity as the decision to transport the child by taxi cab was discretionary. ***Tinkham v. Groveport-Madison Local Sch. Dist.***, 602 N.E.2d 256 (Ohio Ct. App. 1991).

Where a student who was permanently disabled when he was struck by a truck while attempting to

reach his assigned school bus stop alleged negligent design of a school bus route and stop location, the board was found not to have waived its governmental immunity by obtaining a liability insurance policy. ***Beatty v. Charlotte-Mecklenburg Bd. of Educ.***, 394 S.E.2d 242 (N.C. Ct. App. 1990).

A student unsuccessfully claimed a violation of his civil rights when he allegedly was shaken, thrown into his seat, and struck by a school bus driver since the action had the plainly legitimate purpose of maintaining order on a moving bus and did not go beyond the bounds of decency. Also, there was no allegation that the board was aware of any repeated use of excessive force. ***Anderson v. Everett Area Sch. Bd.***, 732 F. Supp. 39 (W.D. Pa. 1989).

Where the father of a third-grade girl contacted the principal of her school regarding his daughter's harassment by an older student, the principal changed the latter's bus stop and took other precautions since the problems had primarily taken place after the students departed their buses and waited for the school's doors to open. When, despite these actions, the girl suffered a partial loss of vision in one eye after being hit by the older student upon departing her bus, the court found that the absence of wilful and wanton misconduct precluded liability on the part of the district. ***Templar v. DeCatur Pub. Sch. Dist.***, 538 N.E.2d 195 (Ill. Ct. App. 1989).

In a civil rights action against a school bus drive, district, and district officials that alleged the physical and sexual assault of students with disabilities, the latter two were not liable for failure to supervise or train adequately, but the charges were sufficient to state a claim of a due process violation against the driver. ***Jane Doe v. Special Sch. Dist.***, 682 F. Supp. 451 (E.D. Mo. 1988).

Where a six-year-old kindergarten student was injured after being hit in the face by a rock thrown by an older student as they waited for the school bus, the court found no breach of duty by the district in the selection of a safe location for the bus stop since it owed no duty to prevent older students from mingling with younger students. Also, it found that the sole cause of the accident was the unforeseeable act of the older student. ***Fornaro v. Kerry***, 527 N.Y.S.2d 61 (N.Y. App. Div. 1988).

Where a seven-year-old girl was killed after being struck by a car at a school crossing, her parents successfully sued the school district for moving a crossing guard without putting into place any warning signs or alternative safeguards. Also, the city was not acting solely in its governmental capacity, but was performing proprietary functions as well when it took actions in removing the guard. ***Gillory v. City of Beaumont***, 746 S.W.2d 16 (Tex. Ct. App. 1988).

Where an elementary school student was struck and killed by a car as she attempted to cross the street and where the crossing guard saw the approaching vehicle but believed that it would stop, a genuine issue of material fact precluded summary judgment in favor of the school district. ***Thompson v. Devlin***, 754 P.2d 1009 (Wash. Ct. App. 1988).

Employees

Where a teacher who accompanied her pupils out of the school building at the end of the day was robbed and sexually assaulted upon returning to her classroom, she unsuccessfully alleged that the city and school board failed to repair the lock on her classroom door as the court held that providing security was a governmental function and that she was unable to prove that she was owed a special duty of protection. ***Berler v. City of New York***, 584 N.Y.S.2d 709 (N.Y. Sup. Ct. 1992).

A school district was not liable for the sexual assault of an assistant principal where she failed to claim a breach of a special duty by the district in its governmental capacity. ***Porterfield v. City of New York***, 573 N.Y.S.2d 681 (N.Y. App. Div. 1991).

A school board and a city were found to have breached a special duty owed a school psychologist who was raped in the school annex where she maintained an office because she was able to establish as a matter of law her reasonable reliance upon their assurances that security measures had been taken for her protection. ***Carol A. v. City of New York***, 565 N.Y.S.2d 169 (N.Y. App. Div. 1991).

In a personal injury action by a teacher against a school superintendent who, apparently angry with her when she was late getting to her classroom, became engaged in a physical altercation with her, picked her up, carried her over his shoulder, and

deposited her on a couch in the teacher's lounge, the court held that the superintendent committed an unjustifiable assault with actions which constituted willful misconduct. ***Binstock v. Fort Yates Pub. Sch. Dist. No. 4***, 463 N.W.2d 837 (N.D. 1990).

Where a volunteer teaching assistant brought a negligence action after being attacked and raped while at school, her intentional nuisance claim was denied for failure to indicate that the school intended to create an unsafe building. The court held that since the actions of the superintendent and the principal were found to require deliberation, decision making, and judgment, they were discretionary decisional acts for which immunity was available; thus because specific conditions of non-governmental activity were not present, the board was not vicariously liable. ***Giddings v. City of Detroit***, 444 N.W.2d 242 (Mich. Ct. App. 1989).

A teacher who was assaulted and injured while stationed at an open gate at the end of a school playground unsuccessfully brought suit against the board of education for negligently allowing the gate to remain broken and for the board's failure to provide adequate security where the court found that since the provision of security was a governmental function, the board was entitled to statutory immunity. ***Bonner v. City of New York***, 539 N.Y.S.2d 728 (N.Y. 1989).

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The Assault and Abuse of School Children

SEVENTEENTH Series, Number 4

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Assaults by Other Children

Sexual Assaults

Rape

A principal was entitled to qualified immunity and was not liable for denying a student's right to due process for imposing a one-day exclusion from school following the pupil's arrest for allegedly raping another student. ***Durso v. Taylor***, 624 A.2d 449 (D.C. App. 1993).

A dispute was ordered to trial where there was a genuine issue of material fact as to whether a school board breached its duty to supervise adequately the students under its control after two students with disabilities were taken from the school grounds and raped by other pupils. ***Doe v. Escambia County Sch. Bd.***, 599 So. 2d 226 (Fla. Dist. Ct. App. 1992).

Where a female student who stayed after school to work on a science project was raped by three male students who were released from detention, the board did not have a duty to provide after-hours protection to the female since there was no evidence that the defendants would commit such a sexual assault. ***Williams v. Columbus Bd. of Educ.***, 610 N.E.2d 1175 (Ohio Ct. App. 1992).

Assault

Where an eighteen-year-old male student had sex on school grounds with a thirteen-year-old female in a special education placement while both were students, the district was not liable as constant and/or individual supervision is not required by law. ***L.K. v. Reed***, 631 So. 2d 604 (La. Ct. App. 1994).

The mother of a mentally retarded public high school student failed to state a section 1983 claim where her child suffered a sexual attack at the hands of another pupil at school as the district and its employees had no constitutional duty to protect her from assault by another student. ***Dorothy J. v. Little Rock Sch. Dist.***, 7 F.3d 729 (8th Cir. 1993).

A student who was sexually assaulted by fellow pupils failed to state a section 1983 claim for deprivation of Fourteenth Amendment liberty interest where Virginia's doctrine of sovereign immunity protected both the board and the teacher from action for simple negligence. ***B.M.H. by C.B. v. School Bd.***, 833 F. Supp. 560 (E.D. Va. 1993).

Both a board of education and a teacher breached their duty to supervise where a grade school child was sexually assaulted by two other students who were wandering the premises unattended when the child was sent to a bathroom down the hall despite the availability of the classroom bathroom. ***Shante D. v. City of New York Bd. of Educ.***, 598 N.Y.S.2d 475 (N.Y. App. Div. 1993).

Molestation

Neither a special relationship existed between students and the school for purposes of a section 1983 action nor did school officials conspire to interfere with the students' civil rights for the purposes of section 1985 action where public high school pupils were allegedly molested by other students. ***D.R. by L.R. v. Middle Bucks Area Vocational-Technical Sch.***, 972 F.2d 1364 (3d Cir. 1992).

Harassment

While a sexual harassment claim based on the existence of a hostile environment may be brought under Title IX where a student had been repeatedly subjected to sexual harassment by other students, in order to obtain damages a plaintiff must prove intentional discrimination based on sex on the part of an employee of the educational institution and not just that the employee knew or should have known of the hostile environment and failed to take appropriate action to end it. ***Doe v. Petaluma City Sch. Dist.***, 830 F. Supp. 1560 (N.D. Cal. 1993).

Physical Assault

Harassment and Hazing

Where a school district did not have a constitutional duty to protect a student from repeated harassment and assault by other students, simple negligence was insufficient to support a section 1983 claim. ***Elliott v. New Miami Bd. of Educ.***, 799 F. Supp. 818 (S.D. Ohio 1992).

The substantive due process rights of a student were not violated when the coach did not protect a

member of the school football team from a hazing ritual by other students on team bus. ***Reeves by Jones v. Besonen***, 754 F. Supp. 1135 (E.D. Mich. 1991).

Fights

A school board was not vicariously liable for the tortious action of a student who resumed a fight with another youngster after they had been separated and placed in different rooms and were awaiting discussions with administrators, since the resumption of the fight was not foreseeable. ***Adams v. Caddo Parish Sch. Bd.***, 631 So. 2d 70 (La. Ct. App. 1994).

A teacher's failure to change the seating arrangement of a classroom which could have been used to mitigate unruly behavior by students supported a jury's finding of gross negligence which proximately caused injuries to pupils in the classroom fight. ***Smart v. Hampton County Sch. Dist. No. 2***, 432 S.E.2d 487 (S.C. Ct. App. 1993).

Where a teacher had followed a school board's standard dismissal procedure and a student was injured in a fight after being delivered safely to his mother's companion, who sent him back into the school to find his sister, the board was not negligent. ***Hickingbottom v. Orleans Parish Sch. Bd.***, 623 So. 2d 1363 (La. Ct. App. 1993).

A school district and administrators were not liable to protect a student under section 1983 based on a compulsory school attendance law where a student was injured in a fight with another pupil in school because such fights occurred on a regular basis. ***Russell by Russell v. Fannin County Sch. Dist.***, 784 F. Supp 1576 (N.D. Ga. 1992).

Where a student was injured when stabbed with a knife during a fight on school grounds during lunch period, the district was protected by discretionary statutory immunity. ***Mosley v. Portland Sch. Dist. No. 1J***, 843 P.2d 415 (Or. 1992).

Claims of negligent educational programming and negligent supervision by a special needs student, who was injured while fleeing from a fight with another student, were barred by the discretionary functions exception of the state Tort Claims Act. ***Bencic v. City of Malden***, 587 N.E.2d 795 (Mass. App. Ct. 1992).

A high school principal did not commit willful and wanton misconduct by failing to station a monitor in the school parking lot when informed of a possible fight by a student who was later injured in the altercation, since he had interviewed the assailant and had been assured that the problems between the two had been resolved. ***Siegmann v. Buffington***, 604 N.E.2d 1038 (Ill. App. Ct. 1992).

A school district had statutory authority to expel a student who used a stun gun in a fight with another student on a campus other than the one he attended. ***Fremont Union High Sch. v. Board of Educ.***, 286 Cal. Rptr. 915 (Cal. Ct. App. 1991).

An injunction restraining a school board from expelling high school students for the remaining six months in the school year because they were involved in a fight after school and off campus was affirmed as an abuse of discretion. ***Robinson v. Oak Park and River Forest High Sch.***, 571 N.E.2d 931 (Ill. App. Ct. 1991).

Unprovoked Attacks

Where evidence was lacking for the court to take judicial notice of the fact that the facility in which a victim of assault and the alleged perpetrator of the act lived was a school, a student's adjudication as a juvenile delinquent on the basis of aggravated assault was dismissed properly. ***In re D.S.***, 622 A.2d 954 (Pa. Super. Ct. 1993).

Where a student was beaten viciously by fellow pupils in gym, there was an exception to the general waiver of immunity because the injuries had arisen out of assault and battery. ***Ledfors v. Emery County Sch. Dist.***, 849 P.2d 1162 (Utah 1993).

A teacher who was monitoring halls during a change of classes was performing a discretionary function and thus was immune from liability where a student was injured by another pupil in the classroom. ***Coyle v. Harper***, 622 So. 2d 302 (Ala. 1993).

A school board did not breach its duty or act unreasonably when a student's jaw was broken after unexpectedly being struck by another pupil. ***Coleman v. Joyner***, 593 So. 2d 451 (La. Ct. App. 1992).

Whether a school district was grossly negligent in supervising students where one pupil assaulted another during school hours was an issue for a jury and should not have been decided on a motion to dismiss. ***Woodell v. Marion Sch. Dist. One***, 414 S.E.2d 794 (S.C. Ct. App. 1992).

A school district's breach of a duty which it voluntarily assumed was found to have been the proximate cause of the death of a student who was murdered by a neighborhood bully. ***Greene v. City of New York***, 566 N.Y.S.2d 40 (N.Y. App. Div. 1991).

Pranks and Horseplay

A judge's failure to instruct the jury that it could find the intentional acts of another student as the sole proximate cause of injury when a student shut a door on another pupil's leg in jest was a reversible error. ***McCall v. Chicago Bd. of Educ.***, 593 N.E.2d 621 (Ill. App. Ct. 1992).

A school board was not liable since its alleged lack of supervision was not the proximate cause of injuries sustained by a student when his chair was pulled out from under him by another child because such a sudden unexpected prank could not have been anticipated. ***Tomlinson v. Board of Educ.***, 583 N.Y.S.2d 664 (N.Y. App. Div. 1992).

Hit by Objects

A school was relieved of liability by the intervening act of a student's throwing a screwdriver that struck and injured another child while they were on school property. ***Mix v. South Seneca Cent. Sch. Dist.***, 602 N.Y.S.2d 467 (N.Y. App. Div. 1993).

Implied assumption of risk did not relieve a school district of liability for negligent failure to supervise pupils after a child was hit in the eye by a dirt clod on a play ground where several students were throwing clods at each other. ***Lucas v. Fresno Unified Sch. Dist.***, 18 Cal. Rptr.2d 79 (Cal. Ct. App. 1993).

The suit filed by a student who was hit in the eye by a nail thrown by another pupil was dismissed properly where the action failed to comply with the presentment requirements of the state Tort Claims Act by not offering a written claim within two years of the cause of action. ***Berube v. City of Northampton***, 602 N.E.2d 560 (Mass. 1992).

Outside of Classroom

A school did not breach its duty to a student who was pushed in the hallway by another pupil since his injury resulted from the act of an intervening third party and could not have been anticipated. ***McGregor v. City of New York***, 602 N.Y.S.2d 669 (N.Y. App. Div. 1993).

There was sufficient evidence to support a jury's finding that a board of education breached its duty to provide adequate supervision where two students were struck by another pupil with a hammer while they were trying to leave the school building, since the school was aware of a threat against one of the victims and security offers who could have prevented the assault were not at their assigned posts. ***Mirand v. City of New York***, 598 N.Y.S.2d 464 (N.Y. App. Div. 1993).

A school district was not liable for a sudden unprovoked and unexpected attack on a student who was thrown down onto a concrete patio during recess. Also, the principal was entitled to immunity for deciding how children should be supervised since this is a discretionary rather than a ministerial function. ***Watts v. Wayne County Bd. of Educ.***, 412 S.E.2d 541 (Ga. Ct. App. 1991).

Since a school is not the insurer of its students' safety, it was not liable for the spontaneous and unanticipated injury caused by one student who tripped another student in a school hallway. ***Ceglia v. Portledge Sch.***, 590 N.Y.S.2d 228 (N.Y. App. Div. 1992).

Outside of School Building

Where the evidence was insufficient as a matter of law to support a jury verdict that a lack of supervision was the proximate cause of death of a student who was shot while standing outside of the school at lunch time, an action by the deceased student's mother was dismissed. ***Maness v. City of New York***, 607 N.Y.S.2d 325 (N.Y. App. Div. 1994).

School teachers were performing a discretionary function in supervising students during recess and

were therefore immune from liability where a student was injured by other pupils while on the school playground. ***Kroger By and Through Kroger v. Davis***, 622 So. 2d 303 (Ala. 1993).

Where a pupil was shot while leaving school premises, a school board had the duty of maintaining a student parking lot in a reasonably safe condition even though the actual injury took place a few feet beyond the school property line. ***Gutierrez v. Dade County Sch. Bd.***, 604 So. 2d 852 (Fla. Dist. Ct. App. 1992).

A school district exercised due care in supervising its students where a pupil was shot and injured by gang members after school hours on a public street adjacent to school property since the activity of the gang members was not foreseeable. ***Brownell v. Los Angeles Unified Sch. Dist.***, 5 Cal. Rptr.2d 756 (Cal. Ct. App. 1992).

An application for leave to file late notice of claim was denied after a student was injured as a result of an assault by another pupil outside the school before the beginning of class where the plaintiff admitted to a deliberate delay in serving notice for fear of possible retaliation by the district. ***Doukas v. East Meadow Union Free Sch. Dist.***, 590 N.Y.S.2d 226 (N.Y. App. Div. 1992).

A school committee neither exceeded its authority nor acted in an arbitrary or capricious manner in expelling a student for assaulting a fellow pupil on a public street near school property where his action was a continuation of a conflict that occurred on the school grounds. ***Nicholas B. v. Sch. Comm.*** 587 N.E.2d 211 (Mass. 1992).

Assaults by Adults

Sexual Assaults

Harassment

Damages were available to enforce Title IX where a female student was subjected to continual sexual harassment since teachers and administrators were aware of and investigated the harassment but took no action to halt it. ***Franklin v. Gwinnett County Pub. Sch.***, 112 S. Ct. 1028 (1992).

A school board violated both the Open Meeting Law and the Data Practices Act by discussing the details of charges against a guidance counselor accused of sexual harassment in an open meeting because the counselor's arbitration proceeding had not concluded at the time of the meeting and information relied upon by the board in reaching its decision was private data. ***Unke v. Independent Sch. Dist. 147***, 510 N.W.2d 271 (Minn. Ct. App. 1994).

A school district's motion for summary judgment was denied where genuine issues of material fact existed as to whether female students who were allegedly sexually abused by a teacher were subjected to hostile environment sexual harassment in violation of Title IX as a result of the teacher's continued presence in the district. Also, the teacher was collaterally estopped from denying charges of molestation based on a finding by the commission on teacher credentialing that he had molested female students. ***Patricia H. v. Berkely Unified Sch. Dist***, 830 F. Supp 1288 (N.D. Cal. 1993).

Battery

A school board was immune from liability and a home room teacher was not liable when a first-grade student was released to go to the bathroom unattended and a physical education teacher allegedly committed sexual battery upon the child since neither the board nor the homeroom teacher could be held liable for a negligent act when a superseding criminal act by a third party is the cause of the injury that could not reasonably have been foreseen. ***Thurmond v. Richmond County Bd. of Educ.***, 428 S.E.2d 392 (Ga. Ct. App. 1993).

Where a teacher engaged in consensual sexual relations with a student over the age of sixteen, he was not liable for sexual battery since he was found not to have stood *in loco parentis* with the student for the purposes of the sexual battery statute. ***State v. Noggle***, 615 N.E.2d 1040 (Ohio 1993).

A teacher's conviction for sexual battery was affirmed where, after calling a female student into the wrestling room, he blocked the door and engaged in prohibited sexual conduct because the coercive atmosphere created by the teacher resulted in an unlawful restraint. However, his conviction for sexual battery after he grabbed her buttocks and put

his hands down her top was reversed on the ground that she had voluntarily accompanied the teacher on a nonschool related function because unlawful restraint was not shown. ***People v. Arnold***, 7 Cal. Rptr.2d 833 (Cal. Ct. App. 1992).

Where a school board had no prior knowledge of a teacher's satanic beliefs and deviant sexual behavior it was immune from liability for his sexual abuses and batteries against students because his acts were outside of the scope of his employment. ***Duyser v. School Bd. of Broward County***, 573 So. 2d 130 (Fla. Dist. Ct. App. 1991).

Abuse

An elementary teacher's status was sufficiently related to facilitating the crime to permit sentence enhancement where he was convicted of interstate transportation of minors for unlawful sexual activity. ***United States v. Booth***, 996 F.2d 1395 (2d Cir. 1993).

A school district and its administrators were not liable under section 1983 for a teacher's sexual abuse of a middle school student for injuries that occurred after the student graduated from middle school. However, the defendants were not entitled to qualified immunity under section 1983 for sexual, physical, and verbal abuse that occurred during the school year. ***K.L. v. Southeast Delco Sch. Dist.***, 828 F. Supp. 1192 (E.D. Pa. 1993).

School officials were not entitled to qualified immunity in a 1983 action by a special education student for sexual, physical and verbal abuse by a teacher where the action or inaction of school officials amounted to custom, practice, or policy of indifference for the purposes of a 1983 action. ***C.M. v. Southeast Delco Sch. Dist.***, 828 F. Supp. 1179 (E.D. Pa. 1993).

A school district was not liable for allegations of sexual abuse by a teacher's aid because even though the four-year-old child was injured in the genital area, there was no clear evidence to support a claim of sexual abuse. ***S.M. v. R.B***, 862 P.2d 1166 (Mont. 1993).

A student was entitled to file a late notice of claim for abuse by a teacher where she was receiving treatment for psychiatric problems attributed to the abuse because although she did attempt to file notice of a claim within one month after she turned eighteen, the district had not been substantially prejudiced in defending against the claim. ***Meredithe C. v. Carmel Cent. Sch. Dist.***, 597 N.Y.S.2d 199 (N.Y. App. Div. 1993).

A motion to serve late notice of claim in an action alleging the sexual abuse of an infant special education student was denied as prejudicial to the district where it was not established that it had actual knowledge of the facts underlying the claims. ***Donald E. v. Gloversville Sch. Dist.***, 594 N.Y.S.2d 385 (N.Y. App. Div. 1993).

A school maintenance worker was entitled to an administrative hearing to determine whether he was subject to discharge where he had been charged with sexual abuse of his daughter and the charges were later dismissed. ***Sublett v. District Sch. Bd. of Sumter County***, 617 So. 2d 374 (Fla. Dist. Ct. App. 1993).

A nursery school teacher's conviction for sexual abuse of children was reversed as a psychologist's testimony that the conduct of victims was consistent with child sexual abuse was inadmissible since evidence pertaining to child sexual abuse syndrome may not be used as substantive evidence of guilt and in camera proceedings did not meet proper standards of fairness. ***State v. Michaels***, 625 A.2d 489 (N.J. Super. Ct. App. Div. 1993).

An insurance company was not liable for indemnifying the criminal acts of a teacher who sexually abused students since Alabama law is clear that nothing requires an insurer to indemnify a third party for the insured's criminal acts where such acts are excluded from coverage in the insurance policy. ***Horace Mann Ins. Co. v. Fore***, 785 F. Supp. 947 (M.D. Ala. 1992).

The admission of testimony concerning a male teacher's prior consensual sexual relationship with a seventeen-year-old female student on school grounds was reversible error where he was convicted of sexual abuse of a thirteen-year-old female student. ***People v. Peters***, 590 N.Y.S.2d 916 (N.Y. App. Div. 1992).

The controlled access by counsel for the defense to the educational records of a victim was appropriate

where a grandfather charged with the sexual abuse of his twelve-year-old granddaughter proffered that the longstanding, antagonistic, and hostile relationship between himself and the girl's father might show a pattern of lying or of acting out to gain attention. ***Zaal v. State***, 602 A.2d 1247 (Md. 1992).

High school students who had been sexually abused by a teacher could not, under the state's discovery rule, delay filing suit where they did not repress memory of the incidents, remained aware of their injuries, and consciously chose not to pursue the matter in order to avoid embarrassment. ***Doe v. Coffee County Bd. of Educ.***, 852 S.W.2d 899 (Tenn. Ct. App. 1992).

A teacher's sexual abuse of five students over a sixteen-year period did not comprise a persistent and widespread pattern of unconstitutional misconduct such that a school district was liable for the purposes of a section 1983 suit absent a showing either that it had knowledge of the teacher's conduct or that its procedures for addressing child abuse in the schools were inadequate. ***Thelma D. by Delores A. v. Board of Educ.***, 934 F.2d 929 (8th Cir. 1991).

A teacher charged with sexual abuse who sought an adjournment of the hearing before the local board of education pending the disposition of parallel criminal charges against him was not disqualified from receiving his pay during the period of his suspension prior to his resignation. ***Derle v. North Bellmore Sch. Dist.***, 568 N.Y.S.2d 888 (N.Y. 1991).

Rape

For the injuries to an eleven-year-old student, who was raped by an uncle who checked her out of school when she became ill and could not reach her parents, the school was not liable, as the rape was not foreseeable. ***Snider v. Snider***, 855 S.W.2d 588 (Tenn. Ct. App. 1993).

Where a middle school basketball coach raped a female student, his actions fell outside of the scope of his employment and thus beyond the coverage of the district's insurance policy so that it was not required to defend him. However, to the extent that the board purchased insurance which covered allegations that it negligently supervised its employee, the board effectively waived its governmental immunity. ***Durham City Bd. of Educ. v. National Union***, 426 S.E.2d 451 (N.C. Ct. App. 1993).

Whether a school board breached its duty of care by failing to provide adequate supervision was a question of fact for the jury where a student was raped on school property while waiting for her school bus. ***O'Campo v. School Bd. of Dade County***, 589 So. 2d 323 (Fla. Dist. Ct. App. 1991).

Sexual Involvement

Where an eighth-grade student who was sexually involved with her basketball coach was unable to establish that she was deprived of a constitutionally protected right, she was not permitted to proceed under a 1983 action. Also, she failed to provide facts showing custom or policy on part of the school district necessary for recovery under Title IX. ***R.L.R. v. Prague Pub. Sch. Dist. I-103***, 838 F. Supp. 1526 (W.D. Okla. 1993).

The sentence of a minimum of fifty-one years was not so grossly disproportionate that it violated the Eighth Amendment where a junior high school teacher abused his position of respect and power in his sexual exploitation of an elementary school student, even though the victim did not attend the teacher's school. ***Crawford v. United States***, 628 A.2d 1002 (D.C. 1993).

The revocation of a teacher's certification was justified as having a rational basis in the teacher's admissions, inappropriate correspondence, and a student's testimony that he had engaged in sexual intercourse with her. ***Groht v. Sobol***, 604 N.Y.S.2d 279 (N.Y. App. Div. 1993).

A teacher's acquittal on criminal charges nine days after his dismissal by the board of education did not require its reconsideration of the charges since dismissal cases are decided by a preponderance of evidence while criminal matters require proof beyond a reasonable doubt where the teacher was released for inappropriate sexual interaction with a juvenile teaching aide. ***Hall v. Board of Educ. of Chicago***, 592 N.E.2d 245 (Ill. App. Ct. 1992).

The disparity of power alone was sufficient to support a finding of seduction where a teacher was accused of engaging in sexual relations with a fifteen-

year-old student on school premises. ***Franklin v. Hill***, 417 S.E.2d 721 (Ga. Ct. App. 1992).

A hearing officer's reinstatement of an assistant principal accused of sexual activity with a seventh-grade student was not against the manifest weight of evidence where both polygraph and paternity tests pointed to a teacher as being the father of a student's child, since the probative value of these two pieces of evidence is considered minimal and the testimony was conflicting. ***East St. Louis Sch. Dist. v. Hayes***, 604 N.E.2d 557 (Ill. App. Ct. 1992).

Where a teacher's involvement in an inappropriate relationship with a student was found to be remediable, he was entitled to written warning prior to termination. ***Hegener v. Chicago Bd. of Educ.***, 567 N.E.2d 566 (Ill. App. Ct. 1991).

Neither the superintendent's role as prosecutor nor nonparticipating board member's role as witness for the superintendent was sufficient to rebut a presumption of objective adjudication where a teacher's employment was terminated for soliciting and engaging in sexual relations with one of his students. ***Fairfield Community Sch. Dist. v. Justmann***, 476 N.W.2d 335 (Iowa 1991).

Molestation

A student was deprived of liberty interest under the substantive due process component of the Fourteenth Amendment where she was sexually molested by a teacher. Also, since the principal, but not the superintendent, was deliberately indifferent under section 1983 to the teacher's sexual misconduct with the student by failing to take action that was obviously necessary to prevent or stop the teacher, he could have been found liable. ***Doe v. Taylor Indep. Sch. Dist.***, 15 F.3d 443 (5th Cir. 1994).

A school district did not act with deliberate indifference for purposes of a section 1983 action by transferring a teacher who was accused of molesting two students to another school where he subsequently molested another pupil. ***Gonzalez v. Ysleta Indep. Sch. Dist.***, 996 F.2d 745 (5th Cir. 1993).

A school bus driver and bus company were not state actors for purposes of a section 1983 action by children and their parents who claimed that the driver sexually molested the girls on a school bus. ***Black by Black v. Indiana Area Sch. Dist.***, 985 F.2d 707 (3d Cir. 1993).

Where a band director was convicted of sexually molesting juvenile students, the statute providing a more severe penalty for persons in a position of control or supervision over a juvenile than for other perpetrators was constitutional and did not violate his guarantee of equal protection. ***State v. Moses***, 615 So. 2d 1030 (La. Ct. App. 1993).

A fourth-grade student who was sexually molested by a teacher was not deprived of her right to due process for purposes of a 1983 claim because neither the school board nor the superintendent knew nor had reason to know of the allegations against the teacher until after he was suspended. ***Jones v. Board of Educ. of Sch. Dist. 50***, 854 P.2d 1386 (Colo. Ct. App. 1993).

A fourteen-year-old female student who was sexually molested by her biology teacher had a firmly established constitutional right under the due process and equal protection clauses of the Fourteenth Amendment to be free from sexual molestation, and the superintendent and principal had an affirmative, constitutionally based duty to protect her from such an intrusion into her bodily integrity. ***Doe v. Taylor Indep. Sch. Dist.***, 975 F.2d 137 (5th Cir. 1992).

The statute requiring the denial of a teaching credential to applicants convicted of sex offenses did not create a private cause of action for failure to deny a credential to a convicted sex offender who subsequently molested students. ***State v. Superior Ct.***, 10 Cal. Rptr.2d 527 (Cal. Ct. App. 1992).

A trial judge's refusal to a requested charge of the inability of a child under fourteen years of age to consent to sexual intercourse which was allegedly relevant to rebut a principal's claim of contributory negligence and assumption of risk was affirmed because even though such a charge might have relevance in a case involving a child's ability to consent to criminal acts, whether, as here, a thirteen-year-old has the ability to appreciate the dangers of his environment and to avoid the consequences associated with exposure to such damages is ordinarily left as a

question of fact for the jury. ***Robinson v. Roberts***, 423 S.E.2d 17 (Ga. Ct. App. 1992).

A school board's dismissal of a nonprobationary teacher who was accused of sexually molesting a student was upheld where it was supported by substantial evidence and was not arbitrary or capricious. Also, the teacher's failure to raise the issue of his right to cross-examine the witnesses at the board hearing resulted in a waiver of that right. ***Helena-West Helena Sch. Dist. v. Doris***, 843 S.W.2d 873 (Ark. Ct. App. 1992).

Whether a county school district had a custom, policy, or practice which caused a constitutional deprivation for the purpose of a 1983 claim where a student was sexually molested by a school psychologist was a question of fact for the jury. ***Doe v. Douglas County Sch. Dist. RE-1***, 770 F. Supp. 591 (D. Colo. 1991).

The statute of limitations did not begin to run until the victims of sexual molestation by a teacher discovered or should have discovered all the facts essential to their cause of action. Also, teachers who knew of the molestation were not excused from the reporting requirement simply because they believed that it had ceased. ***Daly v. Derrick***, 281 Cal. Rptr. 709 (Cal. Ct. App. 1991).

A school district was liable for the sexual molestation of a nine-year-old girl by an unknown man in a school restroom during school hours even though trial court found no liability on the part of the teacher since the board had a duty to formulate and properly promulgate a policy against allowing children to leave the classroom alone during school hours and its breach of this duty was the proximate cause of the victim's injury. ***Doe v. City of New Orleans***, 577 So. 2d 1024 (La. Ct. App. 1991).

A fifteen-year-old student who would have been expelled from school for drinking alcohol on school property was not required to exhaust administrative remedies before seeking injunctive relief as she would have suffered irreparable injuries if she were not permitted to return to school following the disclosure that her being a victim of sexual molestation was a contributing factor to her drinking problem. ***In re P.J.***, 575 N.E.2d 22 (Ind. Ct. App. 1991).

A school district was not entitled to discretionary function immunity under the state Tort Claims Act where a six-year-old child was sexually molested by a school bus driver and sustained injuries as a result of school employees' violation of mandatory reporting requirements. ***Kansas State Bank v. Specialized Transp. Serv.***, 819 P.2d 587 (Kan. 1991).

Assault

The prosecution was not required to produce a four-year-old victim of sexual assault at trial or to have the court find that the child was unavailable before out of court statements of the child could be admitted under the spontaneous declaration and medical examination exceptions to the hearsay rule. ***White v. Illinois***, 112 S. Ct. 736 (1992).

A principal and a kindergarten teacher could not be held liable for criminal acts of third parties unless they knew or had reason to know that the criminal act was about to occur on the premises where a child claimed that she was sexually assaulted by two individuals while she was on a playground. ***W.L.O. v. Smith***, 585 So. 2d 22 (Ala. 1991).

Where a school district contracted with a taxicab company to transport a child with a developmental disability to and from school and the driver sexually assaulted the student, the company was liable for the driver's actions as a common carrier. However, the district was protected by sovereign immunity since it exercised its discretion in contracting with the taxicab company for the child's transportation. ***Tinkham v. Groveport-Madison Local Sch. Dist.***, 602 N.E.2d 256 (Ohio Ct. App 1991).

Improper Contact

Where a male high school teacher invited a male student to stay in the same bedroom with him over night on at least three occasions, the teacher's alleged sexual contact with the student was found to be unprofessional conduct which satisfied a statutory ground for dismissal. ***Morris v. Clarksville-Montgomery***, 867 S.W.2d 324 (Tenn. Ct. App. 1993).

Where a librarian was dismissed based on charges of immorality with two students, the secretary of education improperly reversed the local board's action by relying on a procedural defect by the board.

Forest Area Sch. Dist. v. Shoup, 621 A.2d 1121 (Pa. Commw. Ct. 1993).

Where a school librarian engaged in oral sex with a student, the school district could not be held liable unless it knew or, in the exercise of reasonable care, should have known that the librarian constituted a risk or danger to its students. ***Peck v. Siau***, 827 P.2d 1108 (Wash. Ct. App. 1992).

A discharged teacher accused of inappropriate touching of a female student who was reinstated by arbitration was ineligible to recover attorney's fees under the collective bargaining agreement. Also, statements made by the principal to the alleged victim's mother were conditionally privileged since the mother had a common interest in the subject matter of the investigation. ***Hitter v. Bellevue Sch. Dist. No. 405***, 832 P.2d 130 (Wash. Ct. App. 1992).

A school board's decision to terminate a teacher's contract for incidents of improper physical contact with students, despite a hearing examiner's recommendation for a one-year suspension, was upheld where evidence supported the board's decision as the court found it inappropriate to substitute its own judgment for that of the board. ***Johnson v. School Bd. of Dade County***, 578 So. 2d 387 (Fla. Dist. Ct. App. 1991).

The findings of the teacher standards and practices commission that a teacher was not of good moral characterresulting in the denial of his request for the reinstatement of his license was reversed where the accusation that he was accused of repeated acts of inappropriate contact with female students were based entirely on hearsay and not supported by substantial evidence. ***Reguero v. Teacher Standards and Practices***, 822 P.2d 1171 (Or. 1991).

Communication

A teacher's inappropriate statements, touching, and language in the presence of students was sufficient to support a recommendation for his dismissal on the grounds of neglect of duty and other good just cause. Also, the hearing officer's exclusion of character evidence was not reversible error. ***Knowles v. Board of Educ.***, 857 P.2d 553 (Colo. Ct. App. 1993).

A one-year suspension of a teaching certificate was upheld where the teacher made sexually suggestive comments to his students. Any deficiency in findings of fact related to dismissal by the school board was rendered harmless due to the suspension of his teaching certificate. ***Roberts v. Castor***, 629 So. 2d 311 (Fla. Dist. Ct. App. 1993).

Where the employment contract of a school bus driver who was accused of soliciting sex from a student was not renewed, summary judgment was correctly entered on behalf of the school district in his section 1983 claims because he had no property interest in his continuing employment beyond the term of his existing contract. ***Williams v. Conroe Indep. Sch. Dist.***, 809 S.W.2d 954 (Tex. Ct. App. 1991).

An appeals court affirmed that a teacher could be convicted of official misconduct for exhibiting sexually explicit magazines to her students, having them make collages from those magazines, and discussing her sexual proclivities with them even if she was not convicted of underlying charges of sexual assault and child endangerment. ***State v. Parker***, 592 A.2d 228 (N.J. 1991).

A teacher's conduct in writing overtly sexual letters to female student was irremedial and cause for dismissal without written warning. ***Sparta Sch. Dist. 140 v. Board of Educ.***, 577 N.E.2d 900 (Ill. App. Ct. 1991).

Misconduct

A teacher was not impermissibly denied an administrative position because she had exercised First Amendment right to free speech in reporting another teacher's alleged sexual misconduct to the Department of Children and Family Services where she did not produce evidence that reporting was a substantial factor in the decision not to renew the administrative position and the decision not to reappoint her would have been made in any event. ***Cromley v. Board of Educ. of Lockport High Sch. Dist.***, 17 F.3d 1059 (7th Cir. 1994).

Physical Assaults

Hitting

A teacher was not negligent in the supervision of an aide who struck an incapacitated minor child who was in the bathroom as there was no evidence that the teacher failed to exercise ordinary care or could have reasonably foreseen that the aide would have beaten the child. ***Allen v. Crawford***, 438 S.E.2d 178 (Ga. Ct. App. 1993).

The penalty of dismissal was not disproportionate to a tenured teacher's misconduct where he struck student on hands with a book, a telephone receiver, and was found guilty of several other charges including insubordination. ***Giles v. Schuyler-Chemung-Tioga Educ. Serv.***, 604 N.Y.S.2d 345 (N.Y. App. Div. 1993).

Where substantial evidence supported a school board's decision to dismiss a special education teacher who slapped a learning disabled student, the court would not substitute its judgment for that of the educational authorities. ***Hendrickson v. Spartanburg County Sch. Dist.***, 413 S.E.2d 871 (S.C. Ct. App. 1992).

A prosecutor's pre-trial statements concerning a bus driver's character and her own personal opinion that the bus driver was guilty did not require disqualification in order to ensure a fair trial where the driver drove in a reckless manner while intoxicated and struck or slapped two children because she was unable to establish that any juror was affected by the prosecutor's conduct. ***Barber v. State***, 418 S.E.2d 436 (Ga. Ct. App. 1992).

The dual role played by a school board's attorney as legal advisor and prosecutor prejudiced the hearing for a teacher who was accused of striking a student, resulting in a remand for a new evidentiary hearing. ***Forehand v. School Bd. of Gulf County***, 600 So. 2d 1187 (Fla. Dist. Ct. App. 1992).

Murder

The death penalty was neither excessive nor in violation of the Eighth Amendment prohibition against cruel and unusual punishment where the defendant opened fire on school children, killed two, and wounded several others. ***State v. Wilson***, 413 S.E.2d 19 (S.C. 1992).

Threats

A school board's finding of misconduct was upheld where a driver swerved a school bus in reaction to extreme provocation from a student even though she did not swerve at him or intend to hit him. ***Goss v. District Sch. Bd. of St. Johns City***, 601 So. 2d 1232 (Fla. Dist. Ct. App. 1992).

Physical Force

The discharging of a school bus driver for the use of physical force against two students was not disproportionate to the offense where his performance evaluations indicated that he had difficulty controlling his temper when disciplinary problems arose. ***Heslop v. Board of Educ.***, 594 N.Y.S.2d 871 (N.Y. App. Div. 1993).

The penalty of dismissal was disproportionate to the offense where a driver who had operated a school bus for fifteen years and had received good evaluations used physical force on four students assigned to the bus he was driving. ***Ross v. Oxford Academy and Cent. Sch. Dist.***, 590 N.Y.S.2d 552 (N.Y. App. Div. 1992).

The State Commissioner's determination of a teacher's liability was neither arbitrary nor capricious and the penalty of a one-year suspension without pay was not disproportionate to the offense where the teacher pushed a student into a chalkboard after grabbing the pupil's shoulders. ***Cargill v. Sobol***, 565 N.Y.S.2d 902 (N.Y. App. Div. 1991).

A teacher was entitled to unemployment compensation even though a hearing before an administrative law judge resulted in the termination of her employment where she used physical force after being struck from behind in a classroom since an unemployment hearing officer is not bound by findings of other agencies. ***School Dist. No. 1 v. Fredrickson***, 812 P.2d 723 (Colo. Ct. App. 1991).

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A day care teacher's touching of a student while he was in time-out as a disciplinary tool did not give

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SEVENTEENTH Series, Number 5
Prepared by William Shula, Superintendent
Bethel-Tate Local Schools, Bethel, Ohio

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Notice

A student's expulsion for vandalism was stayed even though he admitted to breaking windows during his expulsion hearing. The court so ruled because the board considered acts with which the student had not yet been charged and of which he had not received notice. ***Yatron v. Hamburg Area Sch. Dist.***, 631 A.2d 758 (Pa. Commw. Ct. 1993).

A high school student who admitted giving marihuana to another pupil but claimed that the exchange took place off of school grounds unsuccessfully challenged her suspension. While notice charged her with distribution on campus, she was suspended for possession. The board had the authority to suspend her for possession. ***Student Alpha Id Number Guja v. School Bd. of Volusia County***, 616 So. 2d 1011 (Fla. Dist. Ct. App. 1993).

A student received a three-day suspension for allegedly stealing a can of soda from a teachers' lounge. The board's decision, contained in a memo to district staff, was delivered to teachers in an unsealed envelope by students who read and discussed it. The district's motion for summary judgment was dismissed as it was necessary to determine whether the hearing procedure was proper. ***Sieck v. Oak Park-River Forest High Sch. Dist. No.200***, 807 F. Supp. 73 (N.D. Ill. 1992).

A seventh-grade student was suspended for refusing to change from an offensive and inappropriate T-shirt in violation of a school disciplinary rule. The rule, which stated that a pupil does not have the right to engage in conduct that disrupts, disturbs, or interrupts any school activity, was upheld by the court as providing adequate notice. ***Broussard by Lord v. School Bd. of City of Norfolk***, 801 F. Supp. 1526 (E.D. Va. 1992).

A Florida Court ordered a student to be re-admitted to school after a school board expelled him for the remainder of the year for fighting. The expulsion was stayed until such time as the board gave temporary or formal notice, thereby making it possible for the student to seek judicial review. ***Mitchell v. Leon County Sch. Bd.***, 591 So. 2d 1032 (Fla. Dist. Ct. App. 1991).

The Registrar improperly suspended a student's juvenile operator's license. The school had suspended him from school for drug or alcohol abuse. The court held that the county, rather than the local, school superintendent, must provide the notice of the pupil's being subjected to disciplinary action to the Registrar of Motor Vehicles. ***Helmeci v. Registrar, Bureau of Motor Vehicles***, 598 N.E.2d 1294 (Ohio Ct. App. 1991).

Where a student received a three-day suspension for refusing to obey a direct order of an instructor to clean the remains of a dead bug he had crushed on the trousers of the band director, proper notice was received. After he admitted to the act but failed to explain his behavior, his parents were notified via a telephone call. The court held that he was afforded his due process since he was made aware of the charges and given an opportunity to explain his actions. ***Wayne County Bd. of Educ. v. Tyre***, 404 S.E.2d 809 (Ga. Ct. App. 1991).

A student, expelled for gross misconduct including fighting with other pupils, threatening the principal, and using obscene language towards the principal and school officials, was given adequate notice. The principal hand-delivered the notice to the father. Because his parents were aware of the misbehavior, the two-days notice was sufficient to prepare for a hearing. ***Stratton v. Wenona Comm. Unit Dist. No.1***, 551 N.E.2d 640 (Ill. 1990).

Parents successfully challenged a board's decision to transfer their son to a separate facility designed for pupils with behavior problems after he committed a major infraction of school rules because the board failed to notify them prior to taking action. ***W.A.N. v. School Bd. of Polk County***, 504 So. 2d 529 (Fla. Dist. Ct. App. 1987).

Hearings

Generally

A high school student, suspended for three days after allegedly threatening her guidance counselor due to her frustration at not being able to change her schedule, claimed that her rights to free speech and due process were violated The court held that while her statement to the counselor was not a threat excluded from a First Amendment protection, her right to due process was not violated because procedural fairness standards were followed by the school personnel. She was entitled to recover attorney fees and costs as the

prevailing party on the free speech issue. ***Lovell by and through Lovell v. Poway Unified Sch. Dist.***, 847 F. Supp. 780 (S.D. Cal. 1994).

The school principal suspended an eleventh-grade student with a history of disciplinary problems who struck another pupil and threatened a secretary. The principal informed the student that he would not be permitted to return to school pending an expulsion hearing. The court found that not allowing him to return to school was rationally related to the offenses since he posed a threat to others as a repeat discipline problem. The court also held that the student failed to prove that any prejudice by the lack of a hearing and that his indefinite suspension was the result of his history of misconduct, and his punishment would have been the same with or without a formal hearing. ***Hill by and through Hill v. Rankin County, Miss. Sch. Dist.***, 843 F. Supp. 1112 (S.D. Miss. 1993).

A high school student and his parents unsuccessfully challenged his three-day suspension for violating an anti-loitering rule. The court held that the rule gave parents and students a clear explanation of the prohibited conduct and was not vague. The student received two informal and one formal hearings at which he was entitled to have counsel present, and the rule was a reasonable restriction on the students' rights to free speech and assembly. ***Wiemerslage by Wiemerslage v. Maine Township High Sch. Dist. 207***, 824 F. Supp. 136 (N.D. Ill. 1993).

A board's decision to suspend students who allegedly received food from the school cafeteria without providing adequate compensation was reversed because the suspension was improperly discussed at a closed board meeting in violation of the state's sunshine law. ***Hardesty v. River View Local Sch. Dist. Bd. of Educ.***, 620 N.E.2d 272 (Ohio Ct. Comm. Pl. 1993).

A student unsuccessfully sought reinstatement to a girls' basketball team. Her challenge alleged that because she was not informed of the specific rule that she had violated and because she was not provided an opportunity to be heard, the school violated her procedural due process rights. The court held that a student's interest in participation in interscholastic athletics amounts to a mere expectation rather than a constitutionally protected claim of entitlement and that there was no agreeable basis for relief. ***McFarlin v. Newport Special Sch. Dist.***, 784 F. Supp 589 (E.D. Ark. 1992).

A student who was suspended for violating the school's drug policy was not deprived of procedural due process. The principal discussed the offense with him and provided a hearing two days later. The student had a second hearing after his parents received notice of the indefinite suspension. His parents appealed the suspension to the assistant superintendent, the superintendent, and then the board of education which reduced his suspension from sixty to thirty days. In this hearing, the student was able to introduce and cross examine witnesses before the board. ***Salazar v. Luty***, 761 F. Supp. 45 (S.D. Tex. 1991).

Where parents were notified of a hearing to determine whether their son should be expelled for threatening several students with a knife and were represented by counsel at the hearing at which his expulsion was affirmed, the court found that the student's due process rights were satisfied. There was an informal hearing before the principal, written notice to the pupil and his parents, the right to appeal to the school board and to be represented by counsel, and a hearing before the board. ***Draper v. Columbus Pub. Sch.***, 760 F. Supp. 131 (S.D. Ohio 1991).

The decision made in a closed meeting of the school board to expel a student was not prejudiced by the presence of school administrators in the room. ***Armstead v. Lima City Bd. of Educ.***, 600 N.E.2d 1085 (Ohio Ct. App. 1991).

A student who had been suspended for insubordination did not have a right to open the hearing to the public. Also, his attempt to argue that the hearing officer was biased because he was compensated by the district was rejected. ***Dimerle ex rel. Dimerle v. Potter***, 575 N.Y.S. 2d 738 (N.Y. App. Div. 1991).

The Fourteenth Amendment was not violated despite claims to the contrary that a school policy contained no procedural protections prior to the administration of corporal punishment. The policy was designed to address situations requiring immediate disciplinary attention and procedural safeguards mandating the presence of the principal would have been futile. ***Thrasher v. General Casualty Co. of Wis.*** 732 F. Supp. 966 (W.D. Wis. 1990).

A principal refused to re-admit a female student unless she submitted to corporal punishment for wearing dark glasses in violation of school rules. Her three suspension ultimately lasted for ten days, at which point the school board decided to re-admit her if she would spend the last six days of school in an isolation room. The court ruled that it was necessary to determine whether the isolation room was a penalty similar to a suspension since the total length of the punishment exceeded ten days, thus requiring that the board accord her a hearing. ***Cole By and Through Cole v. Newton Special Mun. Separate Sch. Dist.***, 676 F. Supp. 749 (S.D. Miss., 1987); *aff'd without written opinion*, 853 F.2d 924 (5th Cir. 1988).

A student's three-day suspension for assaulting another pupil was upheld as not being a denial of due process. Although the assistant principal refused to hear certain witnesses before suspending the student, the student received procedural due process protections at appeals hearings before the superintendent and board of education at which his witnesses testified prior to his suspension. ***Rossman v. Conran***, 572 N.E.2d 728 (Ohio Ct. App. 1988).

School officials suspended a high school student who consumed a cocktail at a senior class outing for the remaining three days of school. As a consequence he missed his final exams, failed three classes, and did not graduate. According to the court, he was not entitled to additional due process safeguards, despite his parents' claim that the hearing was constitutionally defective because the board's attorney, the principal, and the superintendent performed dual roles in the process. The court held that combining an advisory function with a hearing participant's prosecutorial or testimonial role does not per se create an unacceptable risk or bias where the student was given notice and an opportunity to present his side of the story. ***Lamb v. Panhandle Community Unit Sch. Dist. No.2***, 826 F.2d 526 (7th Cir. 1987).

The parents of a high school freshman who received a thirty-day suspension for allegedly gaining unauthorized access into the district's main computer from his home computer successfully claimed that his due process rights were violated when the board impermissibly commingled prosecutorial and advisory functions at the suspension hearing. The court held that an adversarial/prosecutorial posture which creates even the appearance of impropriety and denial of a fair hearing is unacceptable. ***Pittsburgh Bd. of Pub. Educ. v. MJN by NJN***, 524 A.2d 1385 (Pa. Commw. Ct. 1987).

Two students successfully challenged their ten-day suspension for damaging school property because the superintendent's contact with board members may have influenced his judgment, thus depriving the students of an impartial hearing. ***Schank v. Hegele***, 521 N.E.2d 9 (Ohio Com. Pl. 1987).

Confrontation and Cross-Examination of Witnesses

The parents of a fifteen-year-old high school student who struck an athletic coach in the eye with his fist during an altercation unsuccessfully sought to enjoin the district from expelling their son. They claimed a denial of procedural due process since they were unable to cross-examine the coach, who was absent from the hearing. In rejecting any suggestion that criminal procedures should be transported into school suspension cases, the court held that the student's attorney had the opportunity to challenge the coach's affidavit and had called witnesses to present different perspectives. ***Johnson v. Humble Indep. Sch. Dist.***, 799 F. Supp. 43 (S.D. Tex. 1992).

The parents of a student who was expelled for bringing an automatic weapon and ammunition to school unsuccessfully claimed a denial of their son's right to due process since they were not permitted to present, confront, or cross-examine witnesses. The court held that because the school had an interest in and was responsible for safeguarding all children in school by removing potential threats to their safety, the student's procedural due process right was not violated by the hearing. His parents were permitted to speak on his behalf and were invited to bring any witnesses they thought would be helpful to their case. The court also noted that the parents failed to exhaust administrative remedies under the Education of all Handicapped Children's Act. ***Carey on behalf of Carey v. Maine Sch. Admin. Dist. No. 17***, 754 F. Supp 906 (D. Me. 1990).

An eighth-grade student in Michigan received a ten-day suspension for offering to sell what he thought was cocaine, but which turned out to be a harmless look-alike substance. Because he was neither permitted to cross-examine the informant who notified the

assistant principal nor provided with the informant's written statement at the suspension hearing, the student claimed a violation of his right to due process. The court held that due process did require that he be permitted to cross-examine the informant where anonymity was necessary to protect the informant from ostracism and reprisal or to the written statement which had not been relied on by school officials in either the suspension or appeals hearings. ***Paredes by Koppenhoefer v. Curtis***, 864 F.2d 426 (6th Cir. 1988).

Where an Ohio student was expelled for selling marijuana on school grounds he unsuccessfully claimed that his inability to confront and cross-examine witnesses was a denial of due process. The court held that he did not have the right to know the identity of his accusers or to cross-examine them because this might result in reprisals against them. ***Newsome v. Batavia Local Sch. Dist.***, 842 F.2d 920 (6th Cir. 1988).

A student who was suspended, and later expelled, for her involvement with drugs at school without being given a complete list of witnesses or the opportunity to cross-examine all of them unsuccessfully challenged the board's action. The court held that since how much process is due depends upon the circumstances, the confrontation and cross examination of witnesses is not an absolute necessity and the denial of a list of witnesses does not always amount to a prejudicial denial of due process. ***Jones v. Board of Trustees of Pasagoula Mun. Separate Sch. Dist.***, 524 So. 2d 968 (Miss. 1988).

Evidentiary Matters

A student successfully challenged his suspension for possession of marijuana where the board's basing its decision on tape recordings of two prior disciplinary actions involving the student was found to be prejudicial error. The court held that the student was also deprived of his rights to be apprised of the proof against him, to cross-examine witnesses, and to present evidence in rebuttal because the board reviewed the evidence in executive session without permitting his representative to be present. ***Ruef v. Jordan***, 605 N.Y.S. 2d 530 (N.Y. App. Div. 1993).

A mother failed to establish the absence of substantial evidence to support a school district's decision to expel her son for possessing firearms and drugs at school where procedural safeguards were afforded and appropriate standards used. ***Sanchez v. Huntsville Indep. Sch. Dist.***, 844 S.W.2d 286 (Tex. Ct. App. 1992).

The parents of two high school students unsuccessfully challenged a district's policy to exclude unimmunized pupils after an outbreak of measles. The court held that state law allowed districts to exclude students whenever they presented a clear threat to the physical safety to students or others and the district provided adequate notice and a hearing that complied with long-term suspension proceedings. ***Maack v. School Dist. of Lincoln***, 491 N.W.2d 341 (Neb. 1992).

A high school student unsuccessfully appealed his eighty-day expulsion in connection with an explosion in the boy's bathroom. The court found that the board's decision was supported by a preponderance of reliable, probative, and substantial evidence and that the student was represented by counsel, received copies of students' written statements and the identity of the authors, was permitted to fully cross-examine school officials who conducted the investigation, and was permitted to present his defense through his own and his mother's testimony as well as through other students' written statements. ***Beavers v. Anthony Wayne Sch. Bd. of Educ.***, 1991 WL 59888 (Ohio Ct. App. 1991).

A high school student who received a ten-day suspension for possessing drug paraphernalia on school grounds unsuccessfully claimed that the board's action was not only unsupported by the evidence but was also arbitrary where the court found that sufficient evidence supported the board's decision. Also, the board was not required to take into consideration mitigating circumstances of his grades and redeeming qualities. ***Cross v. Princeton City Sch. Dist.***, 550 N.E.2d 219 (Ohio Comm. Pl. 1989).

An eighth-grade student unsuccessfully challenged his suspension after the school yard fight he engaged in with a seventh grader was observed by a school bus driver who intervened where the court held that the evidence supported the finding that he took part in the fight, wore a spiked bracelet that injured the other child, and had been provided with adequate due process. ***Reasoner by Reasoner v. Meyer***, 766 S.W.2d 161 (Mo. App. 1989).

A student who was suspended for drug dealing on school grounds unsuccessfully claimed that the evidence of her alleged dealings was conflicting and insufficient to uphold her suspension where the court held that although the evidence was conflicting, the board's decision was supported by sufficient evidence. ***Jones v. Board of Trustees of Pascagoula Mun. Separate Sch. Dist.***, 524 So. 2d 968 (Miss. 1988).

Where an investigation by a principal and a liaison police officer into several locker room thefts led to the suspension of an Iowa high school student and the recovery of the missing items, the student unsuccessfully claimed that her right to due process was violated since she was not informed of her rights to remain silent and to counsel. The court held that custodial interrogation is questioning initiated by law enforcement officers and the fact that she was not informed of her rights was not relevant because the questioning was non-custodial despite the presence of a police liaison officer. ***Cason v. Cook***, 810 F.2d 188 (8th Cir. 1987), *cert.* denied, 482 U.S. 930 (1987).

Where a school board declared a high school wrestler ineligible to compete because he, along with three other youths, engaged in multiple acts of sexual intercourse with a sixteen-year-old female student in the district, he unsuccessfully sought reinstatement by claiming that the board relied on insufficient hearsay evidence. The court held that the athlete was not deprived of a liberty or of property interest entitling him to procedural due process because he had not yet been awarded a scholarship and the school followed its own disciplinary rules in declaring him ineligible. The court also found that he had been given an opportunity to explain his side of the story, was given an evidentiary hearing, and was represented by counsel. ***Brands v. Sheldon Community Sch.***, 671 F. Supp. 627 (N.D. Iowa 1987).

A student who attended a school dance while drunk was expelled while a friend who was also intoxicated and arrested was not expelled, unsuccessfully claimed that the school's failure to assign similar penalties for the same offense violated the equal protection clause. The court held that the board properly reached its decision after independently considering the strength of evidence against each student. ***Carroll v. City of Dotham Bd. of Educ.***, 510 So. 2d 246 (Ala. Civ. App. 1987).

Bases of Discipline

The father of a seventh-grade student unsuccessfully challenged his son's ten-day exclusion at the end of the school year for non-disciplinary reasons stemming from threats against his life for allegedly making statements about a deceased classmate. He claimed that his son was not afforded procedural and substantive protection. However, the court ruled that the decision to exclude him and to provide him with homebound instruction was rationally related to the school's interest and that he had been given adequate notice and an opportunity to be heard. ***Engele v. Independent Sch. Dist. No. 91***, 846 F. Supp. 760 (D. Minn. 1994).

A student who received a five-day suspension and a grade reduction for days missed due to an alcohol-related offense successfully challenged the grade reduction as arbitrary and capricious. The court reasoned that a teacher should issue a grade reflecting a pupil's academic achievement, which can include class participation and attendance and that since an academic sanction can apply only if a student's misconduct is directly related to his academic performance, there was no such correlation present. The school was ordered to correct his grade. ***Smith v. School City of Hobart***, 811 F. Supp. 391 (N.D. Ind. 1993).

A high school student who had six unexcused absences leading to the denial of course credit and, consequently of her diploma, unsuccessfully challenged the school attendance policy on the ground that it was unreasonable. Applying clean hands doctrine, the court ruled that because the student had forged the excuse notes, her deceit left her with unclean hands and she was not entitled to relief. ***Isbell v. Brigton Area Sch.***, 500 N.W 2d 748 (Mich. Ct. App. 1993).

The parents of two children in a nonpublic school sought further review of a school administrator's disposition of their complaints about their daughter's alleged mistreatment by other students. The court held that the school did not violate their contractual rights by acting within its discretion in expelling their children based on their failure to comply with the school's stated discipline policy. ***Allen v. Casper***, 622 N.E.2d 367 (Ohio Ct. App. 1993).

The expulsion of a high school student who sold marijuana on school premises was upheld. The court

found that the boards action was not arbitrary, capricious, or unreasonable because the offense was a violation of the school's discipline policy and the rules of the student assistance program and was a result of the board's determination that selling drugs is a more severe offense than giving, possessing, or using drugs. ***Morgan v. Girard City Sch. Dist.***, 630 N.E.2d 71 (Ohio Ct. App. 1993).

An Oklahoma high school student successfully challenged her suspension for wearing a T-shirt which she designed to portray the typical teenager in 1991. The court agreed that there was a material issue of fact as to whether the shirt violated district policy. ***McIntire v. Bethel Sch., Indep. Sch. Dist. No. 3***, 804 F. Supp. 1415 (W.D. Okla. 1992).

Students who were suspended, and later expelled, due to damage they inflicted on school property during a fight unsuccessfully challenged the board's actions. Although the court found a rational relationship between the rule and the punishment. It denied summary judgment for either side because there was a genuine issue of material fact as to whether the board's refusal to permit the students to remove books from their lockers during the suspension was a violation of due process. ***Craig v. Selma City Sch. Bd.***, 801 F. Supp. 585 (S.D. Ala. 1992).

A seventeen-year-old high school senior who was expelled for selling cocaine to an undercover police officer off school grounds unsuccessfully challenged the district's action. He held that the school lacked authority to discipline him during off-campus, non-school activities. The court held the removal of a known drug dealer from the student population was adequate reason for its action. Thus, although the court criticized the district for not providing the student with homebound services and a pre-expulsion hearing in a timely manner, it refused to reverse his expulsion. ***Howard v. Colonial Sch. Dist.***, 621 A.2d 362 (Del. Super. Ct. 1992), *aff'd without published opinion* 615 A.2d 531 (Del. 1992).

Where an eighteen-year-old high school student was convicted for possession of marijuana with the intent to distribute, the court ruled that the principal had probable cause to search his locker. Consequently, the search was reasonable under state and federal constitutions. The court also held that because he was not acting as an instrument or as an agent of the police, the principal was not required to give the student a *Miranda* warning before questioning him. ***Commonwealth v. Snyder***, 597 N.E.2d 1363 (Mass. 1992).

A student who was expelled for assaulting another student by continuing a fight that started in school unsuccessfully claimed that the school committee lacked the authority to expel him for conduct outside the school. An appeals court held that since his improper conduct had a clear link to an in-school incident, it was of no consequence that the school's disciplinary rules do not explicitly prohibit the conduct. ***Nicholas B. v. School Comm. of Worcester***, 587 N.E.2d 211 (Mass. 1992).

Two high school students were partially successful in challenging a school rule concerning alcohol consumption after they admitted drinking alcohol at home prior to attending a school dance. In reviewing the rule, the court held that it did not prohibit the consumption of alcohol at home that did not affect student behavior. However, the court further ruled that the reassignment of the student to another school for ninety days was not the equivalent of a long-term suspension that would require statutory hearing procedures. ***Martinez v. School Dist. No. 60***, 852 P.2d 1275 (Colo Ct. App. 1992).

A mother unsuccessfully sought an injunction to compel a school to admit her son into the National Honor Society alleging a violation of due process. Admission was denied because of disciplinary infractions, and school administrators refused to remove them from his records. The court found no liberty or property interest in membership in the National Honor Society. However, a hearing was ordered since there was a genuine issue of material fact as to whether a faculty council's rejection of his application was in retaliation for the father's criticism of school administration. ***Dangler v. Yorktown Cent. Sch.***, 771 F. Supp. 625 (S.D. N.Y. 1991).

A student unsuccessfully challenged his expulsion for using a stun gun against pupils on another campus. The court held that the rule was not overbroad and was related to a school activity and attendance. ***Fremont Union High Sch. Dist. v. Santa Clara County Bd. of Educ.***, 286 Cal. Rptr. 915 (Cal. Ct. App. 1991).

A high school junior unsuccessfully challenged his five-day suspension from the interscholastic swim team and the revocation of his school athletic letter. He had attended an end of the year party at which alcohol was consumed. The court held that the board's regulation was rationally related to its interest in deterring alcohol consumption among students. ***Bush v. Dassel-Cokato Bd. of Educ.***, 745 F. Supp. 562 (D. Minn. 1990).

School officials suspended an eighth-grade student who violated the district's discipline policy by exhibiting a knife at a bus stop on the way to school. The court ruled for the board because it neither abused its discretion nor acted arbitrarily, capriciously, or unreasonably in enforcing its uniform disciplinary procedures where there was substantial and competent evidence in support of its decision. ***Consolidated Sch. Dist. No. 2 v. King by Dresselhaus***, 786 S.W.2d 217 (Mo. Ct. App. 1990).

Students unsuccessfully challenged their suspension for being under the influence of alcohol. The court held that the board of education could interpret the school's alcohol policy to mean that consumption of alcohol followed by attendance at a school function is punishable by suspension. ***Rohrbaugh v. Elida Bd. of Educ.***, 579 N.E.2d 782 (Ohio Ct. App. 1990).

A high school student in Missouri who was excluded from an auto mechanics program because he stole auto parts and was placed on probation by the juvenile court unsuccessfully claimed that the good citizenship requirement upon which continued participation was predicated violated his constitutional right to equal protection by discriminating against juvenile delinquents. The court held that not only was juvenile delinquency not a suspect classification but also that the good citizenship rule was rationally related to the school's legitimate interest of program integrity. ***Felton v. Fayette Sch. Dist.***, 875 F.2d 191 (8th Cir. 1989).

A New Jersey high school athlete unsuccessfully challenged the sixty-day athletic suspension he received after admitting to smoking marijuana and consuming beer at a school radio station. The court held that he received due process under the circumstances because he should have realized that his football eligibility, as well as his status as a student, was at stake. It also reasoned that he was not entitled to greater due process because of the athletic suspension, since participation in extra-curricular activities is not a fundamental right but a privilege and that the state's concern over preserving a drug-free environment was greater than his interest in playing football. ***Palmer by Palmer v. Merluzzi***, 868 F.2d 90 (3d Cir. 1989).

Where a nine-year-old third-grade student in a Kentucky elementary school was paddled by her teacher on three separate occasions, an investigation by the superintendent found that the discipline was consistent with school policy. A suit on behalf of the child unsuccessfully alleged a violation of her due process rights as the court held that not every violation of the state tort law rises to a constitutional level. ***Brown v. Johnson***, 710 F. Supp. 183 (E.D. Ky. 1989).

Four high school students received five-day suspensions for violating a school board policy prohibiting pupils from being under the influence of alcoholic beverages. Neither the faculty nor the assistant principal noticed that they had slurred speech, coordination problems, or acted in any unusual manner. The board argued that although the students' condition did not fit the commonly used definition of under the influence utilized by the courts, their admissions of use and their smelling of alcohol amounted to being under the influence. The students were successful in their challenge when the court held that absent any definition of under the influence in the district's policy, the phrase should retain the commonly understood meaning. ***Evans v. Greenview Local Sch. Dist.***, *unpublished opinion*, 1989 WL 568 (Ohio Ct. App. 1989).

Where various methods, including counseling, had been tried to discipline a student who threatened teachers, attacked other pupils at school, and misbehaved twenty times over a three-year period, the board gave his parents notice of an expulsion hearing. At this hearing, the board voted unanimously to expel him permanently. An appeals court affirmed, noting that since boards have comprehensive authority within constitutional bounds to maintain good order and discipline, the student had a lengthy history of disruptive behavior that the school had attempted to remediate, and that there was no shocking disparity between the offenses and the penalty. ***Scoggins v. Henry County Bd. of Educ.***, 549 So. 2d 99 (Ala. Civ. App. 1989).

Students who were suspended for three days at the end of the school year for distributing an unofficial school newspaper which contained vulgar language, advocated violence against teachers, and led some pupils to disrupt their classes unsuccessfully challenged their suspensions as a violation of their First Amendment rights and the Minnesota Pupil Fair Dismissal Act. They were permitted to make up their exams and to progress to the next grade level. The court held that the students' due process rights were not violated since they were informed of the possible suspensions based on their advocating violence against teachers. Also, while the school failed to follow all of the procedures of the Pupil Fair Dismissal Act by serving notice on or before the date when the suspensions were to take effect, its mailing notice to their parents coupled with other proper actions did not violate the substantive due process protections in the act. ***Bystrom By and Through Bystrom v. Fridley High Sch.***, 686 F. Supp. 1387 (D. Minn. 1987), *aff'd without published opinion*, 855 F.2d 855 (8th Cir. 1988).

Four high school students who admitted to consuming alcohol en route to a football game and who were expelled for the rest of the semester successfully challenged the school's actions on the grounds that the student handbook language was overly broad and vague and that the drug and alcohol policy was too imprecise to advise students of appropriate behavior. The court found that the rule failed to define what "prior to" meant and that testimony by school board members about the rule elicited conflicting definitions. The court held that since the language was vague and unconstitutional, the policy could not be enforced. ***Clairborne v. Beebe Sch. Dist.***, 687 F. Supp. 1358 (E.D. Ark. 1988).

Appropriateness of Punishment

A high school student successfully challenged her one-semester expulsion for possessing an ice pick on school property. The school board abused its discretion since she neither exhibited, brandished, nor threatened anyone with it and was returning it to a friend who left it at her home the previous evening. ***Washington v. Smith***, 618 N.E.2d 561 (Ill. App. Ct. 1993).

A high school student unsuccessfully challenged his two-day academic suspension and removal from the wrestling team for stealing muffins from the cafeteria. The court found that there was a rational basis for the school's action. However, his removal from the wrestling team was lifted as arbitrary since it was imposed pursuant to an athletic guide that had not been adopted by the board of education. ***Manico v. South Colonie Cent. Sch. Dist.***, 584 N.Y.S.2d 519 (N.Y. Sup. Ct. 1992).

A high school student who took copies of an algebra exam from his teacher's filing cabinet unsuccessfully appealed his ten-day suspension The court found that the suspension, along with the grade of "F" for the class, was reasonable and rational. Also, other students who used the exam received a failing grade but were not suspended because they were not involved in its theft. ***Reed v. Vermilion Local Sch. Dist.***, 614 N.E. 2d 1101 (Ohio Ct. App. 1992).

The mother of a thirteen-year-old student successfully challenged his permanent expulsion for bringing a handgun and two bullets to school. An appeals court reversed the finding of a juvenile court which improperly limited itself to constitutional issues. The lower court should have considered whether the board's decision to expel him was reasonable, especially in light of the state's compulsory attendance law. ***C.L.S. v. Hoover Bd. of Educ.***, 594 So. 2d 138 (Ala. Civ. App. 1991).

A fifteen-year-old student threatened with expulsion from school for drinking alcohol on school property was not required to exhaust administrative remedies before seeking injunctive relief. Under the circumstances, i.e., the disclosure that her being a victim of sexual molestation was a contributing factor to her drinking problem, the risk of her suffering irreparable injuries if she were not permitted to return to school outweighed the school's right to maintain an orderly environment. ***In re P.J.***, 575 N.E.2d 22 (Ind. Ct. App. 1991).

Two first-year high school students were expelled for the six-months remaining in the academic year even though they had been fighting off of school grounds and after school hours. They were ordered re-admitted since neither had a record of prior misconduct and since there was no evidence that they would substantially disrupt or materially interfere with other school activities. ***Robinson v. Oak Park and River Forest High Sch.***, 571 N.E.2d 931 (Ill. App. Ct. 1991).

Parents of a sixth-grade special education student who allegedly received excessive corporal punishment from the principal unsuccessfully brought a section 1983 action against the district where the court found that no arbitrary state action existed and there were no substantive due process considerations, irrespective of the alleged capriciousness of the corporal punishment imparted since there were adequate state remedies available. ***Fee v. Herndon***, 900 F.2d 804 (5th Cir. 1990), *cert.* denied 111 S. Ct. 279 (1990).

Where the expulsion hearing for a Connecticut high school student who brought a loaded gun to school in order sell it was postponed twice during his initial ten-day suspension at the request of his mother, he unsuccessfully appealed his subsequent expulsion. The court held that the school board was justified in denying him credit for time served in order to maintain discipline in schools and to prevent disruption attendant upon his resuming classes late in the year. ***Rosa R. v. Connelly***, 889 F.2d 435 (2d Cir. 1989), *cert. denied*, 110 S.Ct. 3225 (1990).

A teacher's motion for summary judgment was denied where there was a genuine issue of material fact as to whether an elementary school student's substantive due process rights were violated when the teacher "tapped" or hit the pupil on the head with a grade book to correct him. However, the court held that the principal did not violate the student's rights under the theory of supervisory liability. ***Meyer by Wyrick v. Litwiller***, 749 F. Supp. 981 (W.D. Mo. 1990).

A high school football player who had no previous disciplinary infractions on his record unsuccessfully challenged his expulsion for carrying a .357 magnum pistol and ammunition in school. The court held that the expulsion was appropriate as it was not arbitrary, unreasonable, capricious, or oppressive. ***Lusk By and Through Lusk v. Triad Community Unit No.2***, 551 N.E.2d 660 (Ill. App. Ct. 1990).

A school district unsuccessfully appealed a juvenile court order requiring a student's placement in an alternative school for children with disciplinary problems. The court ruled that the case was moot because he had graduated already and that identical cases were unlikely to occur in the future. ***Payne v. J.T.N.***, 568 So. 2d 830 (Ala. Civ. App. 1990).

The parents of two special education children unsuccessfully challenged the placement of their children in time-out rooms for in-school suspension. The court held that since the disciplinary acts fell within the scope of the Education for All Children Act, the parents were required to exhaust administrative hearing remedies prior to filing suit. ***Hayes through Hayes v. Unified Sch. Dist. No. 377***, 877 F.2d 809 (10th Cir. 1989).

The school suspended a student who, with his parent's consent, drank two beers while visiting a college, returned to school to attend wrestling practice and admitted to drinking alcohol after his coach smelled it on his breath. He unsuccessfully challenged his suspension. The court ruled that regardless of parental rights to allow their children to consume alcoholic beverages, the board of education has the authority to suspend students who drink alcohol and then attend school sponsored events since it has the power to regulate pupils' use of alcohol in school. ***In re Suspension of Huffer from Circleville High Sch.***, 546 N.E.2d 1308 (Ohio, 1989).

Two students, one subjected to corporal punishment, the other with an in-school suspension, unsuccessfully contended that their rights to substantive due process were violated when the lower court ruled that each punishment was applied justifiably and in good faith. ***Wise v. Pea Ridge Sch. Dist.***, 855 F.2d 560 (8th Cir. 1988).

Where a genuine issue of material fact existed as to whether a physical education teacher's attempted discipline of a junior high school student, which not only broke the child's nose but also caused him to lose consciousness, was intended to harm the pupil, his parents succeeded in having summary judgment in favor of the teacher reversed. ***Metzgar by and through Metzgar v. Osbeck***, 841 F.2d 518 (3d Cir. 1988).

Two high school seniors unsuccessfully challenged their suspensions from class for five days and from the baseball team for drinking alcohol at a school sponsored event. The court held that there was no denial of due process since they were given notice of the charge, an explanation of the evidence, and an opportunity to present their own version of the facts. Also, both students were aware of the prohibition of possession of alcoholic beverages because

they signed acknowledgments of the code of conduct, the impact of missed assignments were de minimis, and one student's chances of a baseball scholarship were speculative. ***Katchak v. Glassgow Indep. Sch. Sys.***, 690 F. Supp. 580 (W.D. Ky. 1988).

A board of education's attendance policy of grade reductions for students who had a certain number of excused absences and who failed to attend mandatory study sessions did not violate a pupil's substantive and procedural due process rights where he had notice of the policy and an opportunity to avoid the adverse affects by attending after school study sessions. ***Slocum v. Holton Bd. of Educ.***, 429 N.W.2d 607 (Mich. Ct. App. 1988).

Where a school district permitted a student who had been seen selling blotter paper laced with LSD to finish his senior year, including all of his examinations, before seeking to expel him on commencement day, the court held that he had a right to a diploma since state law requires districts to issue a diploma to every student who completes the prescribed course of study. ***Shuman v. Cumberland Valley Sch. Dist.***, 536 A.2d 490 (Pa. Commw. Ct. 1988).

The suspension of a juvenile for the remainder of the year after he physically assaulted and threatened teachers and students was upheld because when a student has been lawfully suspended or expelled and the school has not provided a suitable alternative educational forum, public school attendance is not a dispositional alternative in delinquency hearings. The court held that a student's right to an education may be constitutionally denied when it is outweighed by the school's interest in protecting other pupils, teachers, school property and in preventing disruption of the educational system. ***In re Jackson***, 352 S.E.2d 449 (N.C. Ct. App. 1987).

A ninth-grade student unsuccessfully appealed her expulsion from school for violating a board policy against possession of a marijuana cigarette on school grounds. The language of the policy, permitting expulsion for possession of "what appeared to be" marijuana, did not violate any of her due process rights. Also, the board was not required statutorily to furnish her with an alternative educational program during her suspension and subsequent expulsion. ***Walter v. School Bd. of Indian River County***, 518 So.2d 1331 (Fla. Dist. Ct. App. 1987).

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